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**SOCIAL
ASSISTANCE
REVIEW
BOARD**

**SUMMARIES OF
DECISIONS**

Volume 1, Number 1

October 1991



This issue includes summaries of cases
heard during 1988, 1989 and 1990.

These summaries are provided for reference only.
Please consult the full text of the decisions for complete information.

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HOW TO USE THIS PUBLICATION

Summaries of Decisions is a collection of summaries of selected decisions of the Board. It is published four times per year and is distributed free of charge. Instructions for obtaining copies of the decisions summarized in each issue appear on the last page of this publication.

ORGANIZATION

This publication is divided into three parts. Part I contains summaries of decisions that relate to the Family Benefits Act. Part II contains summaries of decisions relating to the General Welfare Assistance Act, and Part III contains summaries of decisions relating to the Vocational Rehabilitation Services Act.

Each decision summarized in this publication is assigned a number of different index terms which reflect its content. The summaries appear under the one heading which best expresses the most noteworthy issue under discussion in each decision. This heading is in **BOLD** type at the beginning of each summary. These headings are arranged in alphabetical order within Part I, Part II, and Part III.

Other index terms which apply to a decision are listed separately to provide a further indicator of content.

Example:

CATEGORICAL ELIGIBILITY

OTHER INDEX TERMS: JOINT CUSTODY; RECONSIDERATIONS;
SINGLE PARENT WITH DEPENDENT CHILDREN

FILE NUMBERS

Each decision is identified by an alphanumeric File Number which appears on the summary in **BOLD** type. This number should be used to identify SARB decisions or to order copies. All decisions from Hearings on Reconsideration have the letter R added to the end.

Example:

File Number: **F0927-16R**

DATE OF HEARING

This date provides an indicator of the age of the decision.

THE SUMMARIES

Each summary is a brief statement of the most important facts of the decision and of the findings of the Board. It is not a guide to the arguments presented by the parties or to the Board's reasoning and analysis. For full insight into these matters readers must consult the full text of the decision. Instructions for obtaining copies of decisions appear on the last page of this publication.

The disposition of the case, the number of pages in the full text version of the decision, and the language in which the decision was written appear as the last sentence in the summary. Certain decisions have both an English and French language version available.

Example:

Appeal denied. (16 pp English; or 18 pp French)

REFERENCES

These references are to documents and authorities considered in and commented on in some detail by the Board in its findings. They are further indicators of the relevance of the decision. The list may include, in this order: federal and provincial statutes, regulations, cases, books, treatises and manuals. Terms whose meanings are discussed in a significant way appear in quotation marks at the end of the list.

Example:

General Welfare Assistance Act s.7(1); Re Richardson and the Commissioner of Metropolitan Toronto Department of Social Services (1988), 46 O.R. (2d) 63; "reside"

CUMULATIVE INDEX

A cumulative index to this publication is included with each issue. Use it to find summaries of decisions on specific subjects of interest to you.

References to summaries in the current issue are integrated with references from preceding issues in this list. Therefore, the most recent index can also be used to find decisions summarized in previous issues. KEEP YOUR BACK ISSUES FOR FUTURE REFERENCE. At the beginning of each year we will begin a new index.

The cumulative index is divided into the same three parts as the rest of the publication. Part I of the index refers to the Family Benefits Act. Part II refers to the General Welfare Assistance Act, and Part III to the Vocational Rehabilitation Services Act.

The index is arranged in alphabetical order by subject within each of the Parts. Each decision appears under several different index terms to provide a detailed guide to its content. Note that headings are of many different types. Factual, procedural, and conceptual terms are used and the names of statutes or programs may also appear as index terms.

Example:

| | |
|--|--------------|
| DRUG BENEFIT | (factual) |
| EXTENSION OF TIME | (procedural) |
| ONUS | (conceptual) |
| <u>CANADIAN CHARTER OF RIGHTS AND FREEDOMS</u> | (statute) |
| S.T.E.P. PROGRAM | (program) |

HOW TO USE THIS PUBLICATION

The left hand side of each index page shows the index terms and the File Numbers of all of the decisions which contain information on these subjects.

Example:

EXTENSION OF TIME
H0321-05

Information on the right hand side of each index page shows where the summaries of decisions on any given topic originally appeared in our publication. Details about page number, issue number, and issue date are provided.

PART I

**DECISIONS UNDER THE
FAMILY BENEFITS ACT**

CATEGORICAL ELIGIBILITY

OTHER INDEX TERMS: JOINT CUSTODY; RECONSIDERATIONS; SINGLE PARENT WITH DEPENDENT CHILDREN

File Number: **F0929-17R**
Date of Hearing: August 10, 1989

The Applicant was legally divorced and obtained joint custody of her two children. The children's primary residence was the home of the father who had care of them during the week. The Applicant had care of them on weekends and for half of their vacation time. She was not the parent designated to receive family allowance payments or to apply for the child tax credit at year end.

The issue before the Board was whether the Applicant was eligible for benefits as a divorced mother with dependent children, and more particularly, whether the children were supported by their mother and therefore dependent.

The Board found that this category of eligibility is not satisfied by the Applicant proving that she is the mother of a dependent child. She must be a mother with a dependent child. This means that

the child must be in her care and control to the extent that it can be assumed that she cannot pursue full-time employment. The concept of being a parent with a dependent child goes beyond providing some support to the child or having custody of a child for certain periods of time.

Even though the Applicant provided a certain amount of support to her children and had care of them on weekends and some holidays, the support obligations and the custody arrangements to which she agreed do not interfere with her ability to work full time. The Board concluded that she was not a mother with dependent children. **Appeal denied. Appealed to the Divisional Court, file number 1043/90.** (26 pp; English)

REFERENCES: Family Benefits Act s.1(f)(i) and s.7(1)(d); Family Benefits Policy and Procedural Guidelines Manual, Index #7, s.4.0; "with a dependent child"

CATEGORICAL ELIGIBILITY

OTHER INDEX TERMS: JOINT CUSTODY; SINGLE PARENT WITH DEPENDENT CHILDREN

File Number: **H1121-16**
Date of Hearing: May 15, 1990

The Recipient, who was separated from her spouse, signed a joint custody document thinking that joint custody meant fifty percent, or equal responsibility between the two parents. She did not

FAMILY BENEFITS ACT

initially have her children half-time but later won half-time custody on an interim court order. Pending the Court's decision, she received a family benefits allowance. The Recipient was not the parent designated to receive the family allowance payment or to apply for the child tax credit at year end. On the advice of her husband's lawyer she had signed over the family allowance cheques to her husband and he thereafter applied for child tax credits.

The Recipient's ex-husband became ill and due to delayed Unemployment Insurance sick benefits he himself applied for General Welfare Assistance. The Recipient's allowance was cancelled on the grounds that she was not the parent receiving the family allowance and making application for the child tax credit and she was therefore not the categorically eligible parent.

The Board must rely on legislation rather than on ministerial policy guidelines when determining eligibility.

Because the Recipient had care of her children for approximately half the time and provided both significant financial support in the maintenance of her children as well as beneficial nurturing, the Board found that the exercise of her parental obligations limited the amount of time that the Recipient could work. She therefore fit within the meaning of "single mother with dependent children" and this role was likely to last for a prolonged period of time. **Appeal granted.** (17 pp; English)

REFERENCES: Family Benefits Act

s.1(f)(i) and s.7(1)(d); Family Benefits Policy and Procedural Guidelines Manual, Index #7, s.4.0



CREDIBILITY

OTHER INDEX TERMS: AVAILABLE FINANCIAL RESOURCE; SINGLE PARENT WITH DEPENDENT CHILDREN

File Number: **J0304-20**

Date of Hearing: July 18, 1990

The Applicant applied for an allowance as a sole-support parent with one dependent child. The Applicant did not know the identity of the father and was therefore unable to seek financial support for her child from him. The Director determined that the Applicant was ineligible because she had not made reasonable efforts to pursue financial support.

The Board found that to make a reasonable effort the Applicant must have some knowledge of who the father is. The testimony of the Applicant was credible. She made as reasonable an effort as her memory permitted under the circumstances. The Applicant and her child could not be denied an allowance simply because she was unable to recall the circumstances that led to her pregnancy.

The Board found that there was no evidence to allow for a reduction in the allowance. The legislation infers that the Director must have some knowledge that there is some financial resource available

to the Applicant. The evidence presented was not disputed and there was no information about the father or his ability to pay that would allow the Director to determine a fair reduction. Therefore, a reduction was unwarranted. **Appeal granted.** (16 pp; English)

REFERENCES: O.Reg. 318 s.8



EXTENSION OF TIME

OTHER INDEX TERMS:
OVERPAYMENTS; SINGLE PERSON

File Number: **H0321-05**
Date of Hearing: May 18, 1990

The Recipient was separated from her husband who, on his own accord, gained entry to her apartment and refused to leave. The Recipient did not resume any aspects of a marital relationship with her husband. Her allowance was reduced on the grounds that she received an overpayment of \$15,547 because she was not living as a single person. The preliminary issue was whether to extend the time for requesting a hearing before the Board.

The Board found that the Recipient raised a substantial legal issue and presented supporting facts. There were prima facie grounds for claiming relief pursuant to a hearing. However, the Recipient was roughly seven months late in requesting an appeal.

There were reasonable grounds for the

extension for two principal reasons: the overpayment had never been reviewed and it had an ongoing effect on the Recipient's monthly benefits. The Recipient did not challenge the overpayment at the time because of her uncertainty of what might happen to her as a result of coming forward, nor did she receive any legal advice at the time. Second, the Director had not made any submissions on the issue of extending the time. There was no evidence that the Director has been prejudiced by the delay in his ability to present his case.

The time to request a hearing should be extended. The substantive issues in this case will be dealt with in a separate decision. **Time extended.** (13 pp; English)

REFERENCES: Family Benefits Act
s.13(6)



EXTENSION OF TIME

OTHER INDEX TERMS: FINANCIAL
HARDSHIP; OVERPAYMENTS; SHELTER

File Number: **H1122-06**
Date of Hearing: April 10, 1990

The Recipient requested a hearing regarding an outstanding overpayment incurred in four stages between March 1984 and July 1987. The request was not submitted within the prescribed time and the Director requested that the appeal be quashed. The second issue was the amount of benefit the Recipient received as of January 1990.

FAMILY BENEFITS ACT

Concerning the first issue the Board found that the Recipient's request was well beyond the thirty-day limitation period. Prima facie grounds for claiming relief did not exist, nor were there reasonable grounds for the delay in applying for the appeal.

The Recipient acknowledged receipt of notice of each of the four separate overpayments but elected not to appeal them at those times because she either agreed with the Director's decision and/or she could not be bothered. The Board did not find the Recipient's explanations reasonable and denied the request to grant an extension of time.

Concerning the second issue the Recipient's entitlement must be revised to reflect a change in shelter costs. The Board also found that the overpayment recovery rate created financial hardship and ordered it to be reduced. **Appeal denied in part.** (13 pp; English)

REFERENCES: Family Benefits Act s.13(6); O.Reg. 318 s.13(2)13



FAILURE TO PROVIDE INFORMATION

OTHER INDEX TERMS: LIQUID ASSETS;
MEDICAL CONDITIONS

File Number: G0609-18
Date of Hearing: May 9, 1990

The Applicant was unable to completely and adequately account for the proceeds of the sale of her matrimonial home. She

received her share of proceeds but had no idea how the money was spent. The Director refused an allowance on the grounds that complete and acceptable information had not been provided with regard to the disposition of assets.

Over the years the Applicant has had many shock treatments and spent about two or three months in hospital every year because of manic depression. She believed that the shock treatments had impaired her memory and that both conditions had seriously affected her judgment.

The Board found that the Applicant's credibility was not in doubt and the Board accepted the uncontradicted documentary medical evidence of her illness and the effects of the electroconvulsive therapy. The Applicant had no further knowledge with respect to the disposition of liquid assets and gave the most complete information available to her. There was no evidence to determine whether adequate consideration for the assets had been made. **Appeal granted.** (14 pp; English)

REFERENCES: O.Reg. 318 s.7(1)



LIQUID ASSETS

OTHER INDEX TERMS: AVAILABLE
FINANCIAL RESOURCE; MOTHER WITH
DEPENDENT CHILDREN; TRUSTS

File Number: H1011-10
Date of Hearing: Jan. 31, 1990

The Applicant applied for benefits as a sole-support parent with two dependent children. Her children had received \$10,000 from the Applicant's deceased mother's estate. She, as trustee, then transferred these monies into Guaranteed Investment Certificates on behalf of her dependent children. The Director refused her application on the grounds that the Applicant's assets exceeded the maximum allowable amount and that the Applicant had disposed of her assets in an unacceptable manner.

The Board found that the Applicant was able to access or encroach the monies bequeathed to her children, although she did not wish to do so. She had financial resources available to her and her family in excess of \$10,000 and, therefore, was not a person in need. The collective family assets were above the maximum allowable amount. If one of the children were to be removed as a dependent from the allowance and his/her assets were to be subtracted from the total family assets the balance would be within the permissible range. The Board directed that this matter be referred to the Director for discussion.

The Board found that the Applicant did not transfer or assign liquid assets for inadequate consideration for the purpose of qualifying for an allowance. They were transferred to ensure the maximum return and their value either remained the same or increased. **Appeal denied, in part.** (20 pp; English)

REFERENCES: O.Reg. 318 s.1(1)(a), s.3(1)(b), and s.7(1); Re Fawcett and

Board of Review, Ministry of Community and Social Services (Ont. C.A.), 1 O.R. (2d) 772; Family Benefits Policy and Procedural Guidelines Manual, Index #12



MEDICAL ADVISORY BOARD

OTHER INDEX TERMS: CATEGORICAL ELIGIBILITY; PERMANENTLY UNEMPLOYABLE PERSON; RECONSIDERATIONS

File Number: **G0212-06R**

Date of Hearing: May 25, 1990

The Applicant suffered from lower back pain and other medical disorders. She had a limited education and had only ever held one job. She worked as a waitress but she had to leave after seven months because she was not physically able to do the work.

The medical advisory board recommended to the Director that the Applicant could not be considered a disabled or permanently unemployable person. The Director refused the allowance.

The Board found that there was sufficient evidence to conclude that the Applicant is a permanently unemployable person. The Social Assistance Review Board is not and cannot be bound by the opinion of the medical advisory board as to whether the medical conditions which have been verified make the Applicant a disabled or permanently unemployable person. The Social Assistance Review Board can base its decision on medical conditions verified

FAMILY BENEFITS ACT

by the medical advisory board and can look to them for assistance, but must decide the issue of eligibility itself.

Based on the medical evidence alone, the Social Assistance Review Board would have had difficulty finding that the Applicant suffered from "major physical or mental impairment" as the legislation requires in order to find someone disabled. However, the Board concluded that the Applicant was a permanently unemployable person. **Appeal allowed in part. Appealed to the Divisional Court, file number 990/90.** (14 pp; English)

REFERENCES: O.Reg. 318 s.14(3)



PERMANENTLY UNEMPLOYABLE PERSON

OTHER INDEX TERMS: CREDIBILITY; EXTENSION OF TIME; MEDICAL ADVISORY BOARD; MEDICAL CONDITIONS

File Number: **H0927-08**

Date of Hearing: Feb. 21, 1990

The Applicant suffered from mood disorder and had annual periods of depression. Her sensitivity to stress caused difficulties in keeping employment. It was exacerbated by psychotic symptoms (hallucinations, insomnia, scrambled thinking) which had rendered the Applicant completely dysfunctional for long periods of time. The Director refused the allowance.

The Board found that the Applicant was a reliable and credible witness. Therefore, if all evidence presented on behalf of the Applicant was taken into account she could have been considered eligible according to the definition. However, the Board is limited to considering only those conditions that have been accepted by the medical advisory board - in this case, "brief psychotic episode" and "thought disorder."

Based on the diagnoses and evidence provided, the Applicant cannot be considered to be a permanently unemployable person. **Appeal denied.** (13 pp; English)

REFERENCES: O.Reg. 318 s.1(3)(c); The Director of Income Maintenance v. Jankowski (Ont.C.A.) (unreported)



SINGLE PERSON

OTHER INDEX TERMS: CATEGORICAL ELIGIBILITY; COHABITATION AGREEMENT; SINGLE PARENT WITH DEPENDENT CHILDREN; SPOUSE

File Number: **H0418-09**

Date of Hearing: Oct. 24, 1989

The Recipient applied for an allowance as a divorced mother with one dependent child. She indicated that she was residing with her landlord and provided a cohabitation agreement as evidence that she was not living as a spouse. She did not understand the language, content or

implications of the agreement she was asked to sign but signed at the request of Mr. X. She thought she was signing something that would preserve her independence. Her allowance was suspended and then cancelled on the basis that she was living with a man considered to be her spouse.

The Board found that the Recipient was not a spouse because she had not been cohabiting in a conjugal relationship. In order to be "conjugal" the living arrangement must have a social, economic, and affectionate relationship that is "marriage-like." There was no evidence to suggest such a relationship. Mr. X did not have an obligation to support the Recipient. **Appeal granted. Appealed to the Divisional Court, file number 974/90.** (21 pp; English)

REFERENCES: O.Reg. 318 s.1(1)(d)(iii) and (iv); "conjugal"



SINGLE PERSON

OTHER INDEX TERMS: SINGLE PARENT WITH DEPENDENT CHILDREN; SPOUSE

File Number: **H0216-18**
Date of Hearing: June 28, 1989

At the time of her separation the Recipient rented two rooms from a friend whose spouse was the brother of the Recipient's ex-spouse. Several years later the Recipient's former spouse moved to the same address and rented one room from his brother. The issue was whether,

by living in the same house as her long-estranged ex-spouse, and by separately renting rooms from the landlord, the Recipient could be considered as living with her spouse and thereby not eligible for an allowance.

The Board found that the Recipient had no control over her landlord's decision to rent a room to her ex-spouse. She did not invite him to live there nor did he consult with her before he moved in. The two roomers had no joint signed agreement with the landlord. As a roomer in the same house as her ex-spouse she had an independent relationship with the landlord.

This was not "shared accommodation" or "living together" in the ordinary sense of the words as they are commonly understood. The Recipient had continued to live as a sole-support parent with a dependent child and was eligible for a continued allowance. **Appeal granted.** (15 pp; English)

REFERENCES: "shared accommodation"



SINGLE PERSON

OTHER INDEX TERMS: SINGLE PARENT WITH DEPENDENT CHILDREN; RECONSIDERATIONS; SPOUSE

File Number: **G0615-05R**
Date of Hearing: June 23, 1989

The Recipient and her common-law spouse had two children. After they

FAMILY BENEFITS ACT

separated he found a house and offered to rent her the upstairs while he rented the basement; she accepted. They shared the bathroom and the kitchen, and sometimes ate meals together.

The Board found that they did not coincidentally or independently arrive at the same residence. They had separate leases which appeared to be interdependent. The landlord had promised to put a bathroom and kitchen in the basement but did not. Instead of moving or insisting on this condition being fulfilled, they accepted an arrangement by which the landlord paid for heat, hydro and water.

The Recipient and her spouse were fully sharing the house and not just living separately in different parts of it. The history of the relationship supports this finding. The relationship was turbulent with severe periods of conflict followed by reconciliation and a variety of living arrangements.

Based on the evidence relating both to the situation of the Applicant and her spouse in the shared house and to the nature of their relationship over time, the Board finds that the Recipient was living with her spouse and was therefore not eligible for benefits as a sole-support parent. **Appeal denied.** (14 pp; English)

REFERENCES: O.Reg 318 s.5(b)1



SPOUSAL DECLARATION

OTHER INDEX TERMS: SINGLE PERSON;
SPOUSE

File Number: G0902-14

Date of Hearing: Feb. 22, 1989

The Recipient signed a declaration that she had been living with a Mr. X and that they were spouses. The Recipient was illiterate and it is questioned whether she knew the contents or implications of what she was signing. She signed the document on the insistence of the worker who would not release the allowance otherwise. The Recipient thought that signing would release the money she needed in order to support herself, not deny her a source of income. Such a misunderstanding throws into question the validity of a declaration made under such circumstances.

The Board found there was no evidence that the Recipient and Mr. X understood or had explained to them the meaning and implication of the declaration. There was no evidence that their relationship was such that they would freely have made such a declaration if they had properly understood.

The Board found that the declaration had no force and effect. Despite having signed it the Recipient was living as a single person and not as a spouse. Her continuous co-residence did not amount to cohabitation. Mr. X's income, therefore, should not be taken into consideration when determining the Recipient's eligibility and calculating her entitlement. **Appeal granted.** (10 pp; English)

REFERENCES: O.Reg. 318 s.1(d)(1a)

PART II

DECISIONS UNDER THE
GENERAL WELFARE ASSISTANCE
ACT

ONUS

OTHER INDEX TERMS: CREDIBILITY;
FAILURE TO PROVIDE INFORMATION;
SPOUSE

File Number: H1108-02

Date of Hearing: April 20, 1990

The Recipient was granted assistance as a sole-support parent of one child. She said that she knew very little of the whereabouts of Mr. X, the father of her child, or about his financial resources.

The Administrator discovered that Mr. X was in fact the Recipient's spouse, and that they lived together and operated a restaurant together. Assistance was suspended on the basis that her status as a sole-support parent was in question.

There were great discrepancies between the information which the Recipient originally provided about Mr. X and her testimony at the Hearing. Contrary to her earlier statements, she did have specific knowledge of the whereabouts of Mr. X and had close business and financial dealings with him. Therefore her evidence could not be relied on and she was not a credible witness. The Recipient

deliberately misled the Administrator as to the nature of her relationship with Mr. X and the amount of information she had about him. **Appeal denied.** (29 pp; English)

REFERENCES: O.Reg. 441 s.1(2)(b); Re Burton and Minister of Community and Social Services (1985), 52 O.R. (2d) 211; Re Dowlut and the Commissioner of Social Services (1985), 11 Admin. L.R. 54; Re Pitts and Director of Family Benefits Branch of the Ministry of Community and Social Services (1985), 51 O.R. (2d) 287; Willis v. Minister of Community and Social Services (1983), 40 O.R. (2d) 287

JURISDICTIONAL ISSUES

OTHER INDEX TERMS: AGE; CANADIAN CHARTER OF RIGHTS AND FREEDOMS;
ELIGIBILITY

File No: G1208-21

Date of Hearing: Oct. 10, 1990

The issue before the Board was whether the Recipient was eligible for assistance in her own right as a 15-year-old person. If she was not eligible, the Recipient's counsel submitted that the legislation contravened the Canadian Charter of Rights and Freedoms.

In order to deal with that issue, the Recipient's counsel raised two preliminary issues. First, is the Board a court of competent jurisdiction pursuant to s.24(1)

GENERAL WELFARE ASSISTANCE ACT

of the Canadian Charter of Rights and Freedoms? Secondly, does the Board have the jurisdiction to find that if a section of O.Reg. 441 of the General Welfare Assistance Act is inconsistent with the provisions of the Constitution of Canada, it is, to the extent of the inconsistency, of no force or effect pursuant to section 52 of the Constitution Act, 1982?

The Board concluded that the Recipient was not eligible for assistance in her own right as a 15-year-old person under the legislation. The Board is not a "court of competent jurisdiction." The Board has the jurisdiction to find that a section of the General Welfare Assistance Act or Regulation 441 is of no force and effect to the extent of its inconsistency with the Canadian Charter of Rights and Freedoms pursuant to subsection 52(1) of the Constitution Act, 1982.

The Board will proceed to hear the merits of the Charter case. **Appealed to the Divisional Court, file number 338-91.** (32 pp; English)

REFERENCES: Canadian Charter of Rights and Freedoms s.19(1),(2); s.24(1),(2); Constitution Act, 1982, s.52; General Welfare Assistance Act s.7(1); O.Reg. 441 s.1(2), s.6(1)(a), s.6(4), s.11(1); Canada (Attorney-General) v. Ali (1988), 51 D.L.R. (4th) 555 (FCA); Flora Dudnik v. York Condominium Corporation No. 216 and its Board of Directors and Nick Kaloger, Property Manager et al., June 20, 1990 (unreported) (Ont. Human Rights Commission); Mills v. The Queen (1986), 29 D.L.R. (4th) 161; Poirier v. Canada (Minister of Veterans Affairs) (1989), 58

D.L.R. (4th) 475; The Queen and Big M Drug Mart Ltd.; United Food & Commercial Workers International Union, Local 175 v. Cuddy Chicks Ltd. [1988] O.L.R.B. Rep. 468; [1985] 1 S.C.R. 295 (S.C.C.); Re Tetreault-Gadoury v. Canada Employment and Immigration et al. (1988), 53 D.L.R. (4th) 384



RESIDENCE

OTHER INDEX TERMS: ELIGIBILITY; REFUGEES; VISITORS

File Number: **G0814-14**

Date of Hearing: Dec. 20, 1988

The Applicant was a refugee claimant who had visitor status in Canada. She was refused assistance on the grounds that she could not be considered a resident of the municipality.

The Board found that her situation was identical to the situation of an "out-of-status" or "non-status" refugee claimant, except for the fact that individuals in the latter categories do not have valid visitor status in Canada. However, in all cases, refugee claimants, whether in-status or out-of-status, are seeking to have their status adjusted so that ultimately they may be granted permanent residence in Canada. The Board found no basis for the different treatment of refugee claimants on the basis of immigration status alone.

The Board found that the Applicant's status as visitor did not reflect her intentions upon entering this country. She

GENERAL WELFARE ASSISTANCE ACT

intended to remain in Canada on a permanent or indefinite basis. Her status alone cannot be determinative of her residency. The Applicant resided in the municipality according to the plain common-sense meaning of the word "resides." She de facto lived in the municipality, intended to continue to live there, and did not plan to return to her home country. **Appeal granted.** (12 pp; English)

REFERENCES: General Welfare Assistance Act s.7(1); Re Richardson and the Commissioner of Metropolitan Toronto Department of Social Services, Re Issa and the Commissioner of Metropolitan Toronto Department of Social Services (1988), 46 O.R. (2d) 63; "reside"



RESIDENCE

OTHER INDEX TERMS: VISITORS

File Number: J0311-02

Date of Hearing: July 27, 1990

The Applicants were of modest financial means and entered Canada on visitors' visas, which meant that they were not permitted to work in Canada. They had no funds to maintain themselves. The female Applicant came to gain the custody of her two children. The Applicants applied for assistance and were found ineligible on the basis that they were not residents of Ontario because they were residents of another country.

The Board consulted various dictionaries

and reference works for assistance in construing the term "reside." In all definitions, the Board noted the existence of at least two elements. The first was the de facto living situation - the fact that a person actually lives in a certain place on a day-to-day basis. This actual living situation was coupled, in all definitions, with some sort of intention to remain. Without a clear intention to remain on a longer-term settled or permanent basis, the Board is of the view that a person cannot be said to reside in a given locality.

The evidence was that the Applicants intended to remain in the municipality only until the female Applicant's court case was resolved. Both Applicants were living in the municipality on a temporary basis in order to pursue short-term personal goals. They planned to leave once these had been attained. The Applicants could not be said to reside in the municipality, despite their de facto presence here for a number of months. **Appeal denied.** (16 pp; English)

REFERENCES: General Welfare Assistance Act s.7(1) and (2); Aidoo Hutchinson and the General Manager, Ontario Hospital Insurance Plan, Health Services Appeal Board, June 8, 1990; Re Richardson and the Commissioner of Metropolitan Toronto Department of Social Services (1988), 46 O.R.(2d) 63; "reside"



S.T.E.P. PROGRAM

GENERAL WELFARE ASSISTANCE ACT

OTHER INDEX TERMS: ELIGIBILITY; EMPLOYABLE PERSON

File Number: H1024-05

Date of Hearing: Feb. 27, 1990

The Applicant applied for assistance as a single employable person. She was being paid to care for an infant child five days per week at a rate of \$15 per diem. She was refused assistance on the grounds that she worked more than 120 hours per month and was therefore considered to be engaged in regular full-time employment. The Applicant worked nine hours per day, forty-five hours per week, for a monthly total of approximately 195 hours.

The Administrator's representative testified that "categorical ineligibility" had been dictated by a resolution of the Regional Council of the municipality in question, and there was no choice but to deny the application for assistance.

The Applicant argued that her average monthly earnings were below the General Welfare Assistance entitlement for a single employable person whose rent was equal to hers. She argued that she was discriminated against because she worked for low wages and noted that sole-support parents were not subject to the restriction of working a maximum of 120 hours per month.

The Board identified two approaches to defining the term "regular employment." The first was the "full-time equivalent" approach which had been endorsed by the Administrator in this case and referred to as "categorical ineligibility" based upon 120 hours of work monthly.

The second approach was the "budget-deficit" approach which defined "regular employment" as employment which provides a person with a greater monthly income, after allowable deductions, than he or she would otherwise be eligible to receive regardless of the number of hours worked.

The Board found that "regular employment" may include persons working part time. "Regular employment" requires that a less stringent test be applied than for "full time regular employment." The definition of a "person in need" in O.Reg. 441 links a person's budgetary need to his or her ability to obtain "regular employment." This implies that regular employment is employment which pays a person, after allowable deductions, more than he or she would be eligible to receive in assistance. The words "regular employment" then must be interpreted in a manner which does not rely on number of hours worked but on budgetary considerations.

The "budget-deficit approach" does not limit or remove the regulatory control of subsection 3(1) with respect to situations of under-employment such as found in this case.

The Board applied the tests of subsection 3(1) to the Applicant and found her eligibility intact. By accepting the only employment available to her at the time the Applicant was meeting the eligibility requirement. She was also willing to undertake any other employment for which she was physically capable as also required by the legislation. The Applicant was a person in need who was not

GENERAL WELFARE ASSISTANCE ACT

engaged in regular employment and she is entitled to assistance since her budgetary requirements exceed her income. **Appeal granted.** (15 pp; English)

REFERENCES: O.Reg. 441 s.1(2)(a), s.12, s.13, s.29; Re Bicknell Freighters and Highway Transport Board (1977), 77 D.L.R. 417 (Man. C.A.); Champagne v. The Administrator, Department of Social Services, April 24, 1986 (Ont. Div. Ct.) (unreported); "regular employment"



SINGLE PERSON

OTHER INDEX TERMS: CO-RESIDENCE; SPOUSE

File Number: J0216-15
Date of Hearing: May 16, 1990

The Applicant was divorced from her husband on the grounds of irreconcilable differences. She continued to share an apartment with her former spouse and their son. She applied for assistance as a single unemployable person and was refused on the grounds that she was not living as a single person.

The Applicant and her former husband slept separately, did not socialize together and had separate bank accounts. The husband was in receipt of a Family Benefits allowance as a permanently unemployable person. The Applicant was deleted from his cheque after obtaining her divorce.

The Board found that the Applicant and

her husband had stopped having a conjugal relationship and had ended their joint domestic and economic relationship. They therefore lived separately and apart and were not cohabiting. The Applicant's ex-spouse did not have an obligation to support her. **Appeal granted.** (11 pp; English)

REFERENCES: O.Reg. 441 ss.1(1)(p)(iii) and (iv); Divorce Act 1985 s.8; Family Law Act, 1986 s.30, s.31; Oswell v. Oswell (1990), 74 O.R. (2d) 1990; "conjugal relationship"



STUDENTS

OTHER INDEX TERMS: DISCRETION; ELIGIBILITY; EMPLOYABLE PERSON

File Number: H0622-02
Date of Hearing: Oct. 24, 1989

The Applicant left her family home after completing Grade 11. For several months she did clerical work, then obtained a full-time, permanent job. After three months she quit this job in order to return to school as a full-time student. She then applied for assistance so that she could go to school. She was refused on the grounds that her current unemployment was due to circumstances within her control. The Applicant did not obtain approval for her attendance at school but submitted that this approval was within the discretion of the Administrator, who wrongfully withheld it.

GENERAL WELFARE ASSISTANCE ACT

The Board applied the two tests set out in s.1(2) to determine whether the Applicant was a person in need and eligible. The Applicant must be financially in need and must be eligible under one of the five categories listed in section 1(2) of O.Reg. 441. The Board found that the Applicant did not qualify as a person in need. If she were to have qualified, it would have been as a person whose budgetary requirements exceeded her income by reason of inability to obtain regular employment. However, the Applicant was able to obtain such employment.

Assistance was not available because she did not qualify as a person in need. Therefore, there was no discretion in the Administrator to approve her education program or to waive job search requirements. **Appeal denied. Appealed to Divisional Court, file number 1262-89.** (9 pp; English)

REFERENCES: O.Reg. 441 s.1(2), 3(1)(b); 6(1)

NOTE: In a unanimous decision the Divisional Court held that the Board erred in law in addressing itself to entitlement as of right under s.7(1) of the Act and s.1(2) of the Regulation instead of addressing itself to discretionary entitlement under s.7(2) of the Act and s.6(1) of the Reg.

The Board, in holding that the Applicant must be a person in need within the meaning of s.1(2), emphasized the proviso in s.6(1) that the applicant otherwise remains eligible for assistance. The words "eligible" and "eligibility" are used ambiguously in the legislation.

Nevertheless, the Board erred in interpreting the word "eligible" in s.6(1) to include all the "need" requirements of s.1(2) instead of the financial eligibility requirements only.

Even if the Board was correct in its interpretation of the ambiguous eligibility requirement, the Board erred in interpreting too narrowly the words "inability to obtain regular employment" in s.1(2)(a) of the Regulation and in thereby failing to give a broad purposive interpretation to the educational welfare discretion created by s.6. **Appeal allowed with costs.** Order of the Board set aside. Application remitted to the Administrator.



STUDENTS

OTHER INDEX TERMS: ELIGIBILITY; EMPLOYABLE PERSON

File Number: **H0718-01**

Date of Hearing: Nov. 28, 1989

The Applicant was enrolled full-time in Grade 13. She was refused assistance on the grounds that she was in attendance as a full-time student without the approval of the Administrator.

The Applicant ceased full-time employment in order to return to school. When she enrolled in Grade 13 she found a part-time job, lived at home and paid \$100 per month in rent. She now lives in an apartment.

From her work history it was evident that

GENERAL WELFARE ASSISTANCE ACT

her ability to adjust to a range of work demands in the three jobs she held during the period in question demonstrated that she had saleable skills in the marketplace.

The Board found that the Applicant's unemployment was not because of a significant labour force barrier. Nor had she seriously attempted alternative ways of pursuing her education, such as night school.

The Applicant could have continued to be employed and self-sufficient had she not decided to return to school full-time. She is not a person who has been unable to find regular employment and, therefore, is not a person in need since she does not meet the basic threshold criteria. Accordingly, she does not "otherwise remain eligible for assistance" under the legislation. **Appeal denied. Appealed to the Divisional Court, file number 141/90.** (15 pp; English)

REFERENCES: General Welfare Assistance Act s.7(1); O.Reg. 441 s.1(2)



STUDENTS

OTHER INDEX TERMS: ELIGIBILITY; ONTARIO STUDENT ASSISTANCE PROGRAM

File Number: **J0807-03**
Date of Hearing: Dec. 20, 1990

The Recipient was granted assistance as a single, employable person who was

unable to find regular employment. He looked for work but did not find anything appropriate. He therefore decided to upgrade his education in order to improve his chances of employment. He enrolled in a post-secondary course at a business college. Assistance was cancelled on the grounds that he was a full-time student and, therefore, not able to pursue full-time employment.

The Recipient was eligible for and received a grant from the Ontario Student Award Program but was nevertheless in a difficult financial position. The cost of his course and books was greater than the amount of his grant. In order to continue his studies he was forced to find free accommodation and to rely on an agency which provided low cost meals.

The Board found that the Recipient's efforts to upgrade his education were sensible and deserving of support but concluded that students such as the Recipient are not entitled to assistance. **Appeal denied.** (7 pp; English)

REFERENCES: O.Reg. 441 s.1(2), s.3(1)(b), s.6(1) and (2), s.11(1)



TRANSIENT OR HOMELESS PERSONS

OTHER INDEX TERMS: DISCRETION; HOME VISIT; RECONSIDERATIONS; RESIDENCE; SHELTER

File Number: **E0514-03R**
Date of Hearing: Sept. 7, 1988

GENERAL WELFARE ASSISTANCE ACT

The Recipient applied for and was granted an amount for monthly assistance. In mid-month the Recipient advised the Administrator that she had to move from her current premises and would apply the security deposit towards her remaining rent.

The Administrator took the position that the Recipient had no shelter costs for the month of June and made adjustments to her allowance. The Recipient then moved into a board and lodging situation and was issued a further amount which reflected the change in her circumstances. The board and lodging agreement did not work out and the Recipient moved from the premises. She had difficulty in locating other accommodation partly because she did not have money for a security deposit.

She was advised that her welfare cheque would not be issued because she had no fixed address. For the following two months the Recipient slept in a car and a park, and tented in the backyard of someone's property.

The Board found that the Recipient was a person in need and that she resided in the municipality in question and should not have been disqualified. Following the plain meaning of the word "resides," she did reside in the municipality since she lived there and intended to continue to live there on a permanent basis. The fact that a home visit could not be made could not be used to disqualify her. The requirement of a home visit is discretionary and is not a mandatory eligibility requirement. **Appeal granted in part.** (14 pp; English)

REFERENCES: O.Reg. 441 s.3(1)(a), s.8(9)(a)



UNEMPLOYMENT DUE TO CIRCUMSTANCES NOT WITHIN CONTROL

OTHER INDEX TERMS: ELIGIBILITY

File Number: **G0803-04**

Date of Hearing: March 29, 1989

The Applicant was 20 years old and lived with his parents. He could not write but could read a little. The Applicant's brother gave evidence that, despite his age, his brother was like a child who played with toys in the company of children of 12 or 13 years of age. He had difficulty understanding instructions and things had to be carefully explained to him and repeated often.

The Applicant was employed as a janitor's helper. He explained that the other workers at the plant often ridiculed and imitated him, and had, on occasion, threatened him. One day he told his mother he was too sick to go to work and never went back. Assistance was refused on the grounds that the Applicant's unemployment was within his own control.

The Board found that any determination of whether an Applicant's unemployment is due to circumstances beyond his/her control should take into account the particular circumstances of each individual applicant. It would be

unreasonable to hold this particular Applicant responsible for his actions in quitting his job. **Appeal granted.** (5 pp English; or 6 pp French)

REFERENCES: none

PART III

DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

EDUCATIONAL PROGRAMS

OTHER INDEX TERMS: VOCATIONALLY
DISABLED

File Number: **H0723-04**

Date of Hearing: April 10, 1990

The Applicant had a physical impairment, a profound bilateral sensorineural hearing loss. He was unable to identify familiar words by hearing alone but relied on speech reading and manual communication methods.

The Applicant received Vocational Rehabilitation Services to attend a carpentry course at George Brown College. He did not successfully complete his course because he failed mathematics. He later applied for funding to attend a college for the deaf in the United States to gain a degree in the computer field. His application was denied.

The Board found that the Applicant's

work history demonstrated that he was incapable of pursuing regularly any substantially gainful occupation. Therefore he was deemed to be a disabled person and eligible to receive goods and services. There was no evidence that the only option for the Applicant was to go into an entirely different field with completely different training requirements. The Applicant should be given the opportunity to succeed at his optimum capacity in a vocational goal in which he has demonstrated an interest and completed some courses. The Board did not find the carpentry goal inappropriate nor was there evidence that working in the computer field was an appropriate goal for the Applicant. **Appeal denied. Appealed to the Divisional Court, file number: 904/90.** (28 pp; English)

REFERENCES: Vocational Rehabilitation Services Act s. 1(b), s.8.; O.Reg. 943 s.1(2)(a); Vocational Rehabilitation (Manual), page VR-0503-13; De Boni v. Director of Vocational Rehabilitation Services Branch, May 11, 1978, (Ont. Div. Ct.) (unreported); Re Mroszkowski and Director of the Vocational Rehabilitation Services Branch of the Ministry of Community and Social Services for Ontario (1978), 20 O.R. (2d) 688

EDUCATIONAL PROGRAMS

File Number: **G0814-22**

Date of Hearing: Feb. 13, 1990

The Applicant, a 20-year-old blind man, referred himself to the Vocational

VOCATIONAL REHABILITATION SERVICES ACT

Rehabilitation Services program to have his post-secondary studies funded. He had decided to study journalism and had applied to a college in the United States.

He was refused services and advised that under the VRS Act out-of-province educational programs were only funded if such programs were not available in Ontario or if there were no post-secondary institutions in Ontario that could adequately accommodate a person's disability.

The Applicant appealed on the grounds that an adequate journalism program did not exist in Ontario because there was no program that taught journalism from a religious perspective. The appeal was not heard until almost one year later and during this time the grounds were amended to state that the basis of the Applicant's appeal was that a journalism program with adequate supports for the blind did not exist in Ontario.

The Board found that many of the same support services were provided in Ontario and in the United States. In some instances, however, the American college's services exceeded those provided in Ontario. Nonetheless, it was the Board's opinion that the test under the VRS Act was whether support services adequately enabled blind students to meet their vocational goals and that this test had been satisfied. The purpose of the VRS Act was not to enable disabled students to attend institutions in other countries solely on the basis that services outside of Ontario are superior. **Application for services denied. Request for equipment referred back for reassessment.**

(65 pp; English)

REFERENCES:

O.Reg. 943 s.6(a)(1) and (2)



PRIORITY OF SERVICE

OTHER INDEX TERMS:

JURISDICTIONAL ISSUES; ONTARIO STUDENT ASSISTANCE PROGRAM

File Number: H1119-09

Date of Hearing: May 30, 1990

The Applicant requested priority status concerning a correspondence course in journalism early in the intake process because he needed approval in order to be accepted for Ontario Student Assistance Program funding. He was informed that he would not be given priority status and that his name would be placed on a six-to-eight month waiting list. His initial request that his application for restorative devices be given priority status was also denied, and it was not until some time later that he was informed about the correct procedures for applying for priority status. He also raised the issue of the lack of referral by Family Benefits to Vocational Rehabilitation Services during seven of the years from 1981 to 1989 when he was receiving a Family Benefits allowance.

The Board found that the length of the waiting list was not unreasonable given the history and practice of VRS, and that he had received treatment equal to others on the list. The Social Assistance Review

VOCATIONAL REHABILITATION SERVICES ACT

Board did not have jurisdiction to order that priority be given. The Board was not able to adjudicate priority of service or deal with the request for restorative services because a decision had not been made by the Director.

Moreover, the Board could not hear an issue of referral. The Board has authority to hear appeals related only to decisions of refusal, cancellation, or suspension of benefits or to the amount of benefits

granted. The Board was therefore not able to make a decision on this issue. No jurisdiction. (10 pp; English)

REFERENCES: Vocational Rehabilitation Services Act s.10(1); O.Reg. 943 s.7(a)(1)



CUMULATIVE INDEX

This index includes cases heard in 1988 - 1989 and 1990 and published in Volume 1:1 of SUMMARIES OF DECISIONS.

PART I: DECISIONS UNDER THE FAMILY BENEFITS ACT

| TOPIC/FILE NUMBER | WHERE PUBLISHED | | |
|--------------------------------|-----------------|------------|----------|
| AVAILABLE FINANCIAL RESOURCE | | | |
| H1011-10 | Page 8 | Volume 1:1 | OCT 1991 |
| J0304-20 | Page 6 | Volume 1:1 | OCT 1991 |
| CATEGORICAL ELIGIBILITY | | | |
| F0929-17R | Page 5 | Volume 1:1 | OCT 1991 |
| G0212-06R | Page 9 | Volume 1:1 | OCT 1991 |
| H0418-09 | Page 10 | Volume 1:1 | OCT 1991 |
| H1121-16 | Page 5 | Volume 1:1 | OCT 1991 |
| COHABITATION AGREEMENT | | | |
| H0418-09 | Page 10 | Volume 1:1 | OCT 1991 |
| CREDIBILITY | | | |
| H0927-08 | Page 10 | Volume 1:1 | OCT 1991 |
| J0304-20 | Page 6 | Volume 1:1 | OCT 1991 |
| EXTENSION OF TIME | | | |
| H0321-05 | Page 7 | Volume 1:1 | OCT 1991 |
| H0927-08 | Page 10 | Volume 1:1 | OCT 1991 |
| H1122-06 | Page 7 | Volume 1:1 | OCT 1991 |
| FAILURE TO PROVIDE INFORMATION | | | |
| G0609-18 | Page 8 | Volume 1:1 | OCT 1991 |
| FINANCIAL HARDSHIP | | | |
| H1122-06 | Page 7 | Volume 1:1 | OCT 1991 |
| JOINT CUSTODY | | | |
| F0929-17R | Page 5 | Volume 1:1 | OCT 1991 |
| H1121-16 | Page 5 | Volume 1:1 | OCT 1991 |
| LIQUID ASSETS | | | |
| G0609-18 | Page 8 | Volume 1:1 | OCT 1991 |
| H1011-10 | Page 8 | Volume 1:1 | OCT 1991 |

CUMULATIVE INDEX

| | | | | |
|---------------------------------------|---------|------------|----------|--|
| MEDICAL ADVISORY BOARD | | | | |
| G0212-06R | Page 9 | Volume 1:1 | OCT 1991 | |
| H0927-08 | Page 10 | Volume 1:1 | OCT 1991 | |
| MEDICAL CONDITIONS | | | | |
| G0609-18 | Page 8 | Volume 1:1 | OCT 1991 | |
| H0927-08 | Page 10 | Volume 1:1 | OCT 1991 | |
| MOTHER WITH DEPENDENT CHILDREN | | | | |
| H1011-10 | Page 8 | Volume 1:1 | OCT 1991 | |
| OVERPAYMENTS | | | | |
| H0321-05 | Page 7 | Volume 1:1 | OCT 1991 | |
| H1122-06 | Page 7 | Volume 1:1 | OCT 1991 | |
| PERMANENTLY UNEMPLOYABLE PERSON | | | | |
| G0212-06R | Page 9 | Volume 1:1 | OCT 1991 | |
| H0927-08 | Page 10 | Volume 1:1 | OCT 1991 | |
| RECONSIDERATIONS | | | | |
| F0929-17R | Page 5 | Volume 1:1 | OCT 1991 | |
| G0212-06R | Page 9 | Volume 1:1 | OCT 1991 | |
| G0615-05R | Page 11 | Volume 1:1 | OCT 1991 | |
| SHELTER | | | | |
| H1122-06 | Page 5 | Volume 1:1 | OCT 1991 | |
| SINGLE PARENT WITH DEPENDENT CHILDREN | | | | |
| F0929-17R | Page 5 | Volume 1:1 | OCT 1991 | |
| G0615-05R | Page 11 | Volume 1:1 | OCT 1991 | |
| H0216-18 | Page 11 | Volume 1:1 | OCT 1991 | |
| H0418-09 | Page 10 | Volume 1:1 | OCT 1991 | |
| H1121-16 | Page 7 | Volume 1:1 | OCT 1991 | |
| J0304-20 | Page 6 | Volume 1:1 | OCT 1991 | |
| SINGLE PERSON | | | | |
| G0615-05R | Page 11 | Volume 1:1 | OCT 1991 | |
| G0902-14 | Page 12 | Volume 1:1 | OCT 1991 | |
| H0216-18 | Page 11 | Volume 1:1 | OCT 1991 | |
| H0321-05 | Page 7 | Volume 1:1 | OCT 1991 | |
| H0418-09 | Page 10 | Volume 1:1 | OCT 1991 | |
| SPOUSAL DECLARATION | | | | |
| G0902-14 | Page 12 | Volume 1:1 | OCT 1991 | |
| SPOUSE | | | | |
| G0615-05R | Page 11 | Volume 1:1 | OCT 1991 | |
| G0902-14 | Page 12 | Volume 1:1 | OCT 1991 | |
| H0216-18 | Page 11 | Volume 1:1 | OCT 1991 | |
| H0418-09 | Page 10 | Volume 1:1 | OCT 1991 | |

CUMULATIVE INDEX

| | | | | |
|--------|----------|--------|------------|----------|
| TRUSTS | H1011-10 | Page 8 | Volume 1:1 | OCT 1991 |
|--------|----------|--------|------------|----------|

PART II: DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

| | | | | |
|--|-----------|---------|------------|----------|
| AGE | G1208-21 | Page 13 | Volume 1:1 | OCT 1991 |
| <u>CANADIAN CHARTER OF RIGHTS AND FREEDOMS</u> | G1208-21 | Page 13 | Volume 1:1 | OCT 1991 |
| CO-RESIDENCE | J0216-15 | Page 17 | Volume 1:1 | OCT 1991 |
| CREDIBILITY | H1108-02 | Page 13 | Volume 1:1 | OCT 1991 |
| DISCRETION | E0514-03R | Page 19 | Volume 1:1 | OCT 1991 |
| | H0622-02 | Page 17 | Volume 1:1 | OCT 1991 |
| ELIGIBILITY | G0803-04 | Page 20 | Volume 1:1 | OCT 1991 |
| | G0814-14 | Page 14 | Volume 1:1 | OCT 1991 |
| | G1208-21 | Page 13 | Volume 1:1 | OCT 1991 |
| | H0622-02 | Page 17 | Volume 1:1 | OCT 1991 |
| | H0718-01 | Page 18 | Volume 1:1 | OCT 1991 |
| | H1024-05 | Page 16 | Volume 1:1 | OCT 1991 |
| | J0807-03 | Page 19 | Volume 1:1 | OCT 1991 |
| EMPLOYABLE PERSON | H0622-02 | Page 17 | Volume 1:1 | OCT 1991 |
| | H0718-01 | Page 18 | Volume 1:1 | OCT 1991 |
| | H1024-05 | Page 23 | Volume 1:1 | OCT 1991 |
| FAILURE TO PROVIDE INFORMATION | H1108-02 | Page 13 | Volume 1:1 | OCT 1991 |
| HOME VISIT | E0514-03R | Page 19 | Volume 1:1 | OCT 1991 |
| JURISDICTIONAL ISSUES | G1208-21 | Page 13 | Volume 1:1 | OCT 1991 |
| ONUS | H1108-02 | Page 13 | Volume 1:1 | OCT 1991 |

CUMULATIVE INDEX

| | | | | |
|--|---------|------------|----------|--|
| ONTARIO STUDENT ASSISTANCE PROGRAM | | | | |
| J0807-03 | Page 19 | Volume 1:1 | OCT 1991 | |
| RECONSIDERATIONS | | | | |
| E0514-03R | Page 19 | Volume 1:1 | OCT 1991 | |
| REFUGEES | | | | |
| G0814-14 | Page 14 | Volume 1:1 | OCT 1991 | |
| RESIDENCE | | | | |
| E0514-03R | Page 19 | Volume 1:1 | OCT 1991 | |
| G0814-14 | Page 14 | Volume 1:1 | OCT 1991 | |
| J0311-02 | Page 15 | Volume 1:1 | OCT 1991 | |
| SHELTER | | | | |
| E0514-03R | Page 19 | Volume 1:1 | OCT 1991 | |
| SINGLE PERSON | | | | |
| J0216-15 | Page 17 | Volume 1:1 | OCT 1991 | |
| SPOUSE | | | | |
| H1108-02 | Page 13 | Volume 1:1 | OCT 1991 | |
| J0216-15 | Page 17 | Volume 1:1 | OCT 1991 | |
| S.T.E.P. PROGRAM | | | | |
| H1024-05 | Page 16 | Volume 1:1 | OCT 1991 | |
| STUDENTS | | | | |
| H0622-02 | Page 17 | Volume 1:1 | OCT 1991 | |
| H0718-01 | Page 18 | Volume 1:1 | OCT 1991 | |
| J0807-03 | Page 19 | Volume 1:1 | OCT 1991 | |
| TRANSIENT OR HOMELESS PERSONS | | | | |
| E0514-03R | Page 19 | Volume 1:1 | OCT 1991 | |
| UNEMPLOYMENT DUE TO CIRCUMSTANCES NOT WITHIN CONTROL | | | | |
| G0803-04 | Page 20 | Volume 1:1 | OCT 1991 | |
| VISITORS | | | | |
| G0814-14 | Page 14 | Volume 1:1 | OCT 1991 | |
| J0311-02 | Page 15 | Volume 1:1 | OCT 1991 | |

PART III: DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

| | | | | |
|----------------------|---------|------------|----------|--|
| EDUCATIONAL PROGRAMS | | | | |
| H0723-04 | Page 21 | Volume 1:1 | OCT 1991 | |
| G0814-22 | Page 21 | Volume 1:1 | OCT 1991 | |

CUMULATIVE INDEX

| | | | |
|--|---------|------------|----------|
| JURISDICTIONAL ISSUES H1119-09 | Page 22 | Volume 1:1 | OCT 1991 |
| ONTARIO STUDENT ASSISTANCE PROGRAM H1119-09 | Page 22 | Volume 1:1 | OCT 1991 |
| PRIORITY OF SERVICE H1119-09 | Page 22 | Volume 1:1 | OCT 1991 |
| VOCATIONALLY DISABLED H0723-04 | Page 21 | Volume 1:1 | OCT 1991 |

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DECISIONS**

Volume 1, Number 2

January 1992

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This publication is divided into three parts. Part I contains summaries of decisions that relate to the Family Benefits Act. Part II contains summaries of decisions relating to the General Welfare Assistance Act, and Part III contains summaries of decisions relating to the Vocational Rehabilitation Services Act.

Each decision summarized in this publication is assigned a number of different index terms which reflect its content. The summaries appear under the one heading which best expresses the most noteworthy issue under discussion in each decision. This heading is in **BOLD** type at the beginning of each summary. These headings are arranged in alphabetical order within Part I, Part II, and Part III.

Other index terms which apply to a decision are listed separately to provide a further indicator of content.

Example:

CATEGORICAL ELIGIBILITY

OTHER INDEX TERMS: JOINT CUSTODY; RECONSIDERATIONS;
SINGLE PARENT WITH DEPENDENT CHILDREN

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The disposition of the case, the number of pages in the full text version of the decision, and the language in which the decision was written appear as the last sentence in the summary. Certain decisions have both an English and French language version available.

Example:

Appeal denied. (16 pp English; or 18 pp French)

REFERENCES

These references are to documents and authorities considered in and commented on in some detail by the Board in its findings. They are further indicators of the relevance of the decision. The list may include, in this order: federal and provincial statutes, regulations, cases, books, treatises and manuals. Terms whose meanings

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are discussed in a significant way appear in quotation marks at the end of the list.

Example:

General Welfare Assistance Act s.7(1); Re Richardson and the Commissioner of Metropolitan Toronto Department of Social Services (1988), 46 O.R. (2d) 63; "reside"

CUMULATIVE INDEX

A cumulative index to this publication is included with each issue. Use it to find summaries of decisions on specific subjects of interest to you.

References to summaries in the current issue are integrated with references from preceding issues in this list. Therefore, the most recent index can also be used to find decisions summarized in previous issues. KEEP YOUR BACK ISSUES FOR FUTURE REFERENCE. At the beginning of each year we will begin a new index.

The cumulative index is divided into the same three parts as the rest of the publication. Part I of the index refers to the Family Benefits Act. Part II refers to the General Welfare Assistance Act, and Part III to the Vocational Rehabilitation Services Act.

The index is arranged in alphabetical order by subject within each of the Parts. Each decision appears under several different index terms to provide a detailed guide to its content. Note that headings are of many different types. Factual, procedural, and conceptual terms are used and the names of statutes or programs may also appear as index terms.

Example:

| | |
|--|--------------|
| DRUG BENEFIT | (factual) |
| EXTENSION OF TIME | (procedural) |
| ONUS | (conceptual) |
| <u>CANADIAN CHARTER OF RIGHTS AND FREEDOMS</u> | (statute) |
| S.T.E.P. PROGRAM | (program) |

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The left hand side of each index page shows the index terms and the File Numbers of all of the decisions which contain information on these subjects.

Example:

EXTENSION OF TIME
H0321-05

Information on the right hand side of each index page shows where the summaries of decisions on any given topic originally appeared in our publication. Details about page number, issue number, and issue date are provided.

PART I

DECISIONS UNDER THE
FAMILY BENEFITS ACT

APPLICATIONS

OTHER INDEX TERMS:
JURISDICTIONAL ISSUES

File Number: G0901-07
Date of Hearing: February 9, 1989

The Applicant was referred to Family Benefits by her General Welfare worker in December 1987. The referral form was sent by courier to the Family Benefits office and receipt was confirmed. Because of administrative confusion no home visit was arranged and no Form 1 taken until August 1988. Moreover, despite the fact that the Applicant's Form 4 was on file, there was more delay before it was sent to the Medical Advisory Board in September. The Applicant was granted an allowance effective October 1988.

Since all of these delays were outside the control of the Applicant, the issue before the Board was whether the Applicant's allowance should have been granted retroactive to January 1, 1988, that is the month following the month in which the referral form for Family Benefits was received, rather

than the actual date of grant.

The Board found that there is an obligation on the part of the Director to take applications, process them, and determine eligibility. In this case, nine months passed before the Director fulfilled this statutory obligation.

Having failed in his duty, could the Director remedy that failure by granting an allowance retroactive to the date when the referral was made? The legislation precludes eligibility prior to the application being taken and there is no legislative authority for the Director to grant an allowance prior to receipt of application. Since the Director could not make the allowance retroactive to that date, neither could the Board.

The Board concluded that the effective date of the allowance should be made in accordance with s.14(3) of O.Reg. 318. Specifically, payment of the allowance should have been made effective September 1, 1988, the month following that in which the Director received the application, and not October 1, 1988, which was the Director's original date of grant. **Appeal granted in part. Decision of the Respondent rescinded in part.** (14 pp; English)

REFERENCES: O.Reg. 318 s.14(3); s.14(6)

FAMILY BENEFITS ACT

EXTENSION OF TIME

OTHER INDEX TERMS: RECONSIDERATIONS

File Number: H0710-11R

Date of Hearing: January 22, 1991

The Applicant applied for benefits as a permanently unemployable person and was refused. He asked the Board to review the Director's decision. The Board found that the Request for Hearing was not made within the thirty-day period required by the legislation and that there were no circumstances to warrant an extension of that period.

The preliminary issues on reconsideration were whether to grant a reconsideration hearing and whether to extend the time for requesting a hearing. The Applicant had requested a reconsideration hearing on the grounds that he did not understand the appeal information found in the letters of refusal because he could not read English. The Board found that this was a compelling reason to hold a hearing.

The Director submitted that the Applicant had filed his written representations against the original refusal in English and that information about the appeal process appears in both English and French on the reverse of both the notice and the confirmation documents. The Applicant testified that he was unable to read English and that his cleaning

woman had written his English letters and filled out the forms for him. He was never made aware of the thirty-day limit for requesting an appeal. The Applicant's legal representative questioned the legality of the notices which are written in English only.

The Board found that the notices sent to the Applicant comply with the legislation in that they inform the Applicant of the Director's decision and the reason for that decision, and that they advise the Applicant how to appeal the decision. However, the notice does not provide a French translation of this information. The reverse side of the notice does contain some information in French but it is general information only. The notice does not set out in French the Director's decision and the reasons for his decision as required by the legislation, nor does it advise the Applicant that he has a right to appeal this specific decision of the Director.

The Board found that the fact that the Applicant could not read or understand English was a factor in his delay for requesting a hearing and justified an extension of time. **Appeal granted. Original decision of the Board rescinded.** (24 pp English; 27 pp French)

REFERENCES: Family Benefits Act s.13(3) and (5); French Language Services Act; Re Director, Family Benefits Branch, Ministry of Community and Social Services and Board of Review under the Family

Benefits Act et al (1974), 5 O.R. (2d) 65, 49 D.L.R. (3d) 484, (Ont. Div.Ct.)



HOMES, HOSPITALS AND INSTITUTIONS, PATIENT OR RESIDENT IN

OTHER INDEX TERMS: DISABLED PERSON

File Number: J0612-02

Date of Hearing: December 13, 1990

The Recipient was a severely disabled person who required intensive nursing care. Although not psychiatrically disabled, he had been placed in a psychiatric hospital out of expedience. In order to facilitate his care and to improve his living conditions he sought financial assistance from the Director for the purchase of a wheelchair known as the Ottobock Full Care System. The issue was whether the legislation prevented the provision of the wheelchair.

The Director denied the application pursuant to subsection 2(10) of O.Reg. 318. This subsection provides that a person may be otherwise eligible if he or she is a patient residing in a psychiatric facility. The Director argued that this subsection does not allow the provision of any benefit other than a personal needs allowance, and that it specifically does not allow the provision of a wheelchair to a patient in a psychiatric facility.

In the Board's view, subsection 2 (10) means that a person, who meets the conditions of (a) to (f) inclusive, is ineligible for benefits provided under seven specific subsections, none of which relate to the provision of a wheelchair. Further, it provides that a person who meets the above conditions is otherwise eligible for an allowance calculated in accordance with section 11.

Eligibility in accordance with section 11 leads directly to section 12. Subsection 12(8) allows for the provision of a wheelchair as a special benefit to chronically ill patients residing in hospitals or facilities designated under the Health Insurance Act. Subsection 12(8) does not mention hospitals and facilities of other types but, in the Board's view, the suitability of the facility to the illness of the patient is assumed in this subsection. Subsection 12(8) explicitly allows for the provision of wheelchairs because it can be reasonably expected that chronically ill persons may need them. The same need does not usually or necessarily follow from psychiatric illness, therefore, no such provision is made in subsection 12(10). The Board found that denying the wheelchair amounted to strictly linking the device to the designated facility, thereby ignoring the human needs of the actual person, and that any ambiguity in the legislation should be resolved in favour of the Applicant. **Appeal granted. Decision of the Director rescinded.** (10 pp; English)

FAMILY BENEFITS ACT

REFERENCES: O.Reg 318 s.2(10), s.12(8); "otherwise eligible"



INCOME

OTHER INDEX TERMS: LIQUID ASSETS; OVERPAYMENTS

File Number: J0216-12

Date of Hearing: July 10, 1990

The Recipient received an allowance as a sole-support mother with two dependent children. Her matrimonial home was sold and she received a share of the proceeds. According to the legislation the proceeds from the sale of an asset can be included as income. The Director therefore determined that there had been an overpayment.

The Recipient bought a car from the proceeds to use for grocery shopping and getting to university classes. The Director initially determined that the motor vehicle was not a necessity because there was public transit in the vicinity. After additional information about bus service at the Hearing, the Director conceded that the car was a necessity and agreed that the amount paid for the car would be deducted from the amount received from the sale of the home and an adjustment made to the overpayment. Nevertheless, there remained a difference between the cost of the car and the amount of the proceeds of the sale and the balance would still be

treated as income.

Counsel for the Recipient argued that there are inconsistencies in the legislation and that a preferred way of treating income from the sale of the assets would be to consider only the portion above the permissible asset level as an overpayment. If this were done the Recipient would have no overpayment. However, counsel did not offer any interpretation that would permit this. It is a principle of statutory interpretation that, in the case of inconsistency, a statute or clause which is general must yield to a statute or clause which is particular. The Board found that while cash would be included as a liquid asset for the purposes of s.3(1) of O.Reg.318, section 13(2)12a sets out in more specific terms that payment from the sale of an asset, which would include cash, is to be considered income. While s.13(2)12a of O.Reg. 318 does not use the terms "liquid asset" or "cash," the word "payment" is sufficiently broad to include cash received on sale of the asset. Therefore, the Board found that the cash received from the sale of the home was income.

The Board concluded that the income received by the Recipient from the sale of the matrimonial home was income but that the amount of that income was to be reduced by the actual cost of the motor vehicle. The difference between the balance after that deduction and the Recipient's entitlement, if any, was an

overpayment which the Director is entitled to recover. **Appeal denied.** Decision of the Director affirmed. (9 pp; English)

REFERENCES: O.Reg. 318 s.3(1), s.13(2)12a; "payment"



JURISDICTIONAL ISSUES

OTHER INDEX TERMS: ONUS; OVERPAYMENTS; PENSIONS AND PENSIONERS

File Number: G0706-02

Date of Hearing: November 1, 1989

The Recipient was advised that he had incurred an overpayment as a result of a review of his British pensions. These pensions were paid in pounds sterling and then converted into Canadian dollars; therefore, the number of dollars received varied because of the fluctuating exchange rates. His allowance was reduced to recover this overpayment. The Recipient did not dispute the overpayment. His allowance continued to be adjusted from time to time for the same reason.

Nearly two years later, the Recipient was again advised that his allowance had been reviewed and that he had an outstanding overpayment. His allowance was again reduced to recover this overpayment. He disputed this overpayment, claiming that he was actually paid less than his entitlement and was, therefore, owed

money by the Director. The Director claimed that part of this second overpayment was the unpaid balance from the original overpayment.

In the time period between the filing of the Notice for Request for Hearing and the actual Hearing, the Director recovered all of the overpayment under appeal and the Recipient was no longer receiving benefits because he had begun receiving the Old Age Security Pension.

The issues before the Board were whether the Board had jurisdiction to render a decision when (1) the Recipient no longer received an allowance and was not appealing the cancellation of this allowance, and (2) when the reduction in the Recipient's allowance ceased before the allowance was cancelled because the total overpayment had been recovered. If the Board had jurisdiction, was the overpayment and reduction in the Recipient's allowance correctly calculated?

After careful consideration of Reichstein, the Board determined that it did not apply here. In Reichstein, the Board never had jurisdiction because, even at the date of the Director's decision to recover the overpayment, the appellant was not receiving benefits. In this case, when the Recipient filed his Form 1, he was receiving benefits and the overpayment was being deducted. Therefore, the Board had jurisdiction to hear this appeal when the Recipient

FAMILY BENEFITS ACT

filed his Form 1 and jurisdiction cannot be lost because of delays in holding the hearing.

Moreover, the Board has jurisdiction over the period that benefits were reduced to recover the overpayment, and the Board can give a remedy to either side in respect of that period. In this case the whole overpayment was recovered before the Recipient moved to an Old Age Security Pension. Therefore, the Board has jurisdiction in respect of the whole overpayment. If the Board finds that the overpayment was not properly assessed or not recoverable, it can order the Director to reimburse the Recipient. If the Board finds that the overpayment was properly assessed and is recoverable, the Board can confirm the Director's decision.

The substantive issue was whether the later overpayment and the deductions from the Recipient's allowance were correctly calculated. There were a number of confusing elements in the documents and amounts had been reclassified or renamed without explanation. Despite these complexities, the Board found that at the time when the Recipient stopped receiving benefits and began to receive the Old Age Security Pension, he owed nothing to the Director and the Director owed nothing to the Recipient. The Board, therefore, affirmed the Director's decision in that respect.

A further issue, raised by the

Recipient's counsel, was whether the overpayment was recoverable because the Director reviewed the Recipient's actual British pension income only about once a year rather than more frequently. The Board found that there was a positive duty on the Recipient to advise the Director of decreases or increases in his British pension income, rather than a duty on the Director to find out. **Appeal denied. Decision of the Director affirmed.** (22 pp; English)

REFERENCES: Reichstein, July 14, 1982, (Ont. Div. Ct.) (unreported)



LIQUID ASSETS

OTHER INDEX TERMS: TRUSTS

File Number: J0520-14

Date of Hearing: October 2, 1990

The Applicant applied for an allowance as a permanently unemployable person who resided with his spouse and two children. The legislation provides that the total value of liquid assets allowable for such a person is \$6,500.

At an earlier time, the Applicant's mother had given the Applicant and his wife a \$10,000 Guaranteed Investment Certificate. The three parties had signed a written agreement which stated that the clear intention of the Applicant's mother was to set up a trust for the education

FAMILY BENEFITS ACT

of the Applicant's two children. The issue before the Board was whether the Applicant or his daughters had a liquid asset of a value greater than \$6,500.

The Board found that the only funds available to the Applicant and his wife were the annual interest payments, which the Applicant's mother intended to be used to supplement their yearly income to help clothe the children, pay for repairs, or perhaps replace a defective household item.

The written agreement was not a sophisticated document prepared by a lawyer. Nevertheless, the Board found that the necessary elements were present to form a trust. Therefore, in the Board's view, no one in the Applicant's family owned assets that could be readily converted into cash. Moreover, the Board found that the only beneficial interest by the Applicant and his wife was the annual interest payment, which is considered income rather than an asset.

The Board further found that, although the Applicant's children had a beneficial interest in the asset held in trust, it was not an asset available for maintenance because it was to be used when the children attained college age for their education. Some part of the asset might be used for maintenance in the future as one component of the education cost, but it was not presently available. **Appeal granted. Decision of the Director rescinded.** (9 pp; English)

REFERENCES: O.Reg. 318 s.1(1)(aa); "trust"



LIQUID ASSETS

OTHER INDEX TERMS: AVAILABLE FINANCIAL RESOURCE

File Number: J0910-10

Date of Hearing: January 31, 1991

The Recipient received an allowance as a sole-support parent. When the Recipient applied for benefits she advised her worker that she owned 100 Class B shares in a company, valued at \$12,000. Her allowance was later terminated on the grounds that her liquid assets exceeded the allowable amount and that she had failed to make reasonable efforts to realize an available financial resource.

The issues before the Board were whether the shares were liquid assets in excess of the allowable amount, and whether the Recipient failed to make an effort to realize an available financial resource.

Because the shares were in a private company they could not be sold to the public. They were, however, retractable, which meant that the company could repurchase the shares on certain specific dates. The shares could not be sold to anyone else, nor could the company be compelled to purchase the shares on any date other than the retraction dates specified. If a shareholder wished to have the

FAMILY BENEFITS ACT

shares purchased by the company, advance notice was required.

The Board found that when the Recipient applied for benefits the shares were not liquid assets because they were not readily convertible into cash at that time. They were not liquid until the retraction date. Because the Recipient did not give the required notice to the company in time, the shares remained locked in and would only become convertible into cash once again, a year later. The Board found that the Recipient did not have liquid assets in excess at the time of the Director's decision.

Pertaining to the second issue, the Recipient testified that the shares were kept by the company and that she had misread the information which the company had provided to her concerning the retraction date and, therefore, was too late. The Board did not find this evidence to be persuasive and concluded that she did not make reasonable efforts to realize the shares. **Appeal denied. Decision of the Director affirmed.** (11 pp; English)

REFERENCES: O.Reg 318 s.1(1)(aa); s.3(1); s.4(1)



MEDICAL ADVISORY BOARD

OTHER INDEX TERMS: DISSENTING OPINIONS; PERMANENTLY UNEMPLOYABLE PERSON; RECONSIDERATIONS

File Number: H0601-02R

Date of Hearing: December 11, 1990

The Director requested a reconsideration. The Director submitted that the original panel erred in law when it found the Applicant to be permanently unemployable when the medical reports of two physicians which had been accepted by the Medical Advisory Board, indicated that the Applicant could return to his previous occupation in several months, and that he was able to do sedentary work immediately.

On reconsideration, the Board found that these statements by the physicians were opinions only and not objective medical findings. The term "objective medical findings" includes diagnoses arrived at using objective medical tests and criteria but not statements about the impact of medical conditions on employability. These statements of the physicians were not binding and the Board was both at liberty and under a duty to make its own finding as to the impact of the Applicant's medical conditions on his ability to work.

The original panel accepted the physicians' opinions about the Applicant's ability to work but still found the Applicant unable to work for a prolonged period of time. Was this an error? The reconsideration panel found that the meaning of "prolonged period of time" is a matter of interpretation and a reasonable interpretation is not an error of law.

The medical reports provided a clear picture of a person who was not medically capable of returning to his previous work as a labourer. The Board's finding that the Applicant was permanently unemployable was therefore reasonable.

The Director also argued that the original Board erred in law in accepting a medical report because it had not been submitted to the Medical Advisory Board. In the opinion of the reconsideration panel, once a diagnosis is accepted by the MAB it is not necessary for the MAB to review every medical report referring to the same condition.

The Director also contended that the original Board should not have accepted this report because it referred to the Applicant's post-surgery medical condition whereas the issue was the Applicant's condition at the date of the Director's decision. The reconsideration panel found that a careful reading of the original decision proved that it clearly focused on the correct time. Moreover, the medical report contained information about the history of the Applicant's knee condition for the specific time period in question. Therefore, the original panel did not err in law in accepting and basing its decision on this report. **Reconsideration hearing refused.** (32 pp; English)

DISSENT: In the conclusion of the original decision, two of the four factors cited as rendering the

Applicant permanently unemployable were elements of the Applicant's later condition and were not relevant to the issue of his condition at the time of the Director's decision. On reading the final paragraph of the Board's findings in the original decision, it seems that the Board put the weight on the evidence pertaining to the Applicant's condition before the Director's decision, whereas the wording of the conclusion gives the impression that at least some weight might have been improperly placed on the post-decision conditions.

When there are apparently conflicting statements in a decision, the request for a reconsideration hearing should be granted. It is the right of both parties to receive a decision with reasons that clearly explain how the decision was reached. When the wording creates confusion, the confusion should be resolved by a hearing *de novo*.

REFERENCES: O.Reg. 318 s.1(3)(c); Director of the Income Maintenance Branch of the Ministry of Community and Social Services v. Jankowski, Feb. 8, 1988, (Ont. C.A.) (unreported); Kowalski and Minister of Community and Social Services, Dec. 21, 1984, (Ont. Div. Ct.) (unreported); (Michaelis) Re Director, Family Benefits Branch, Ministry of Community and Social Services and Board of Review under the Family Benefits Act et al. (1974), 4 O.R. (2d) 65, (Ont. Div. Ct.); "objective medical findings"

FAMILY BENEFITS ACT

SHELTER

File Number: J0617-01

Date of Hearing: November 15, 1990

The Recipient disputed the calculation of her allowance on the grounds that the money she pays for a parking space should be considered part of her shelter costs. If shelter costs were to include parking charges, the Recipient was entitled to an increase in the shelter component of her allowance.

Parking charges payable to a landlord are not specifically mentioned in the definition of shelter found in the legislation. The Recipient's legal representative argued that the term "rent" is broad enough to include parking charges as it does in the Residential Rent Regulation Act.

In the Board's view, it does not follow that the term "rent" must be defined in exactly the same way for the purposes of family benefits. O.Reg. 318 s.12(1)(h) clearly recognizes that rent may sometimes include a charge for other services such as utilities because it uses the words "if their cost is not included in rent." Sometimes such additional items are not included in the rent but are charged for separately and can still be considered as part of the shelter costs.

In the Board's view, the definition of "shelter" states that the cost of utilities are to be considered shelter costs if they are not included in the rent, but makes no similar provision for parking

charges. In general, it may be said that the Family Benefits Act covers those expenses which a person must incur in order to live, not expenses which may be incurred at a person's option. When the cost of parking is included in the rent the tenant has no choice but to pay for parking, even without owning a car, but when the landlord charges separately for parking, it is an optional service. **Appeal denied. Decision of the Director affirmed.** (11 pp; English)

REFERENCES: Residential Rent Regulation Act s.1; O.Reg. 318 s.12(1); "rent"



SPOUSE

OTHER INDEX TERMS: CREDIBILITY;
ONUS

File Number: G0922-08

Date of Hearing: January 17, 1991

The Recipient and her spouse were separated. For several years she received an allowance as a separated parent with dependent children. In 1987 the Recipient moved to another town. Her spouse then moved to the same town and lived with the Recipient for a short time until he found his own room. Shortly after, a fourth child was born. The Recipient's spouse was the father of the child. The Director received a complaint that the Recipient had reconciled with her husband. Following an investigation,

the Director concluded that the Recipient was no longer eligible as a sole-support parent with dependent children because she was living with her spouse and cancelled her allowance.

The Recipient's legal representative was critical of the investigation of the Eligibility Review Officer, suggesting that it amounted to an investigation for fraud and that the onus was on the Director to bring forward credible evidence to support the charge. The legal representative submitted that the investigation was not competent and suggested that, in order to establish whether the Recipient was living with her spouse, the Eligibility Review Officer should have contacted the original complainant and the Recipient's spouse, and had a surveillance done on the Recipient's house.

The Board found that this criticism was of limited validity for several reasons. First, the legal representative had not cross-examined the Eligibility Review Officer about the particulars of the investigation. Second, the Board has no jurisdiction to determine whether the Recipient is guilty of fraud. Third, it would be undesirable to create a system which would require police-type investigations in response to complaints. Fourth, the cancellation of an allowance is an important matter but the onus of establishing eligibility is on the Recipient, not on the Director. It is more desirable to expect recipients to

respond to allegations which have been made against them than to subject them to intrusive measures. In the Board's view, the investigation in this case was generally appropriate.

Moreover, the Recipient's evidence and that of her spouse was incomplete and inconsistent which made it more reasonable to expect her to respond to the Director's evidence with independent evidence of her own. **Appeal denied. Decision of the Director affirmed.** (32 pp; English)

REFERENCES: nil



SPOUSE

OTHER INDEX TERMS:
OVERPAYMENTS

File Number: J0606-03
Date of Hearing: Oct. 19, 1990

The Recipient was receiving an allowance as a sole-support parent with two dependent children. The father of her children moved into her home for ten-months. During the time that he was there, he occasionally paid her some money towards his expenses. The relationship became violent and the Recipient made unsuccessful attempts to get rid of him and to find alternative housing for herself.

The Recipient was afraid to report the situation but, after he left, she

FAMILY BENEFITS ACT

informed her worker. The Director decided that the Recipient was not eligible for this period and calculated an overpayment of \$9,795. This amount was subsequently reviewed and the Director reduced the overpayment to \$5,295, but the recovery rate remained the same.

The issues before the Board were whether the Director correctly determined the reduced overpayment and whether the recovery rate was appropriate. The Director's position was that the Recipient had acknowledged the presence of the father of her children. The Recipient submitted that "living together" should be interpreted as a voluntary arrangement.

The Board found that the father of the Recipient's children was the Recipient's spouse because he had an obligation to support their dependent children. In the Board's view, "living with" must be interpreted according to its ordinary meaning. Two people live with each other if they share common premises, whatever the nature of their relationship. Although her actions were understandable, the Recipient had reluctantly accepted his presence for a period of time and they were living together. In the Board's opinion, the nature or quality of the relationship may be relevant for determining whether people are spouses but it does not impact on deciding whether they are living with each other, except perhaps in the most extreme cases. The test established in

the legislation is whether she was living with her spouse and not whether she was living with her spouse in a spousal relationship.

The Recipient was in a difficult situation and in financial need. She had received an overpayment but it did not put her in a position to repay it. The Board found that the overpayment was correctly calculated but that the rate of recovery caused hardship. **Decision of the Director affirmed; rate of recovery of the overpayment reduced.** (English; 11 pp)

REFERENCES: nil



TRUSTS

OTHER INDEX TERMS: LIQUID ASSETS

File Number: J0701-11

Date of Hearing: December 5, 1990

The Recipient was a disabled, sole-support parent with two dependent children. The two children were left legacies of \$7,000 each by the Recipient's deceased mother. The will provided that the legacies were to be held in trust until the children were 18 years old, but the trustees were authorized to use the trust funds for the children before they reached the age of 18. The Director cancelled the Recipient's benefits on the grounds that her liquid assets exceeded the

permissible amount.

There was no dispute that the children had a beneficial interest in the trust funds and that the funds fell within the definition of "liquid assets." The question was whether the funds were available for maintenance.

The Board found that the trust funds were not available. According to the terms of the will, disposition of both the income and capital of the funds was within the absolute discretion of the trustees. Nor were there any facts that convinced the Board that a court would interfere with the trustees' discretionary power. The Recipient, on behalf of her children, was not able to compel the trustees to make payments to her for the care of her children had her allowance been discontinued.

In the Board's view, the trust funds were available to the trustees, but not to the Recipient or her children. Moreover, the funds were also unavailable in fact. The Recipient had approached the trustees and was refused money from the funds. The Board found that were the trustees to pay out funds in these circumstances, they could be liable to the beneficiaries and be acting contrary to the testator's intentions. The Board concluded that the trust funds were not a "liquid asset." **Appeal granted. Decision of the Director rescinded.** (14 pp; English)

REFERENCES: Director of Income Maintenance Branch of the Ministry of

Community and Social Services v. Audrey Henson (1987), 26 O.A.C. 332, Sept. 22, 1989, (Ont. Div. Ct., upheld by the Ont. C. A.) (unreported); Director of Income Maintenance Branch of the Ministry of Community and Social Services v. Thomas Powell, Dec. 22, 1989, (Ont. Div. Ct.) (unreported)



VISITORS

OTHER INDEX TERMS: INCOME; OVERPAYMENTS

File Number: J0606-06

Date of Hearing: October 17, 1990

The Recipient had been receiving a Family Benefits allowance as a permanently unemployable or disabled person for several years. In 1989 he reported that he had a common-law spouse. They were married a month later. He was informed that she could not be included in his allowance because she had only visitor status in Canada. He was not asked to fill out a declaration. A child was later born and added to his allowance but the wife was still not made a beneficiary of his allowance until she became a landed immigrant.

Relying on Index 19 of the Family Benefits Policy and Procedural Guidelines Manual as the basis of the this decision, the Director suggested that the wife apply for General Welfare Assistance. She was denied

GENERAL WELFARE ASSISTANCE ACT

assistance.

The Board found that from the time that the Director knew that the Recipient had married and that the wife continued to reside in Ontario, the Director erred in law in not including her as a beneficiary in the Recipient's allowance. The Recipient's entitlement should have included his wife as a beneficiary after the date of their marriage. **Appeal granted in part. Decision of the Director rescinded in part.** (13 pp; English)

REFERENCES: Re Richardson and the Commissioner of Metropolitan Toronto Department of Social Services; Re Issa and Commissioner of Metropolitan Toronto Department of Social Services (1984), 46 O.R. (2d) 63, (Ont. Div. Ct.); Family Benefits Policy and Procedural Guidelines Manual, Indexes #11 and #19.

PART II

DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

AGE

OTHER INDEX TERMS: CREDIBILITY;
ELIGIBILITY; STUDENTS

File No: H1008-15

Date of Hearing: March 14, 1990

The Applicant was a 16-year-old girl. Her parents were separated and her father obtained custody for her care. When she became a teenager their relationship began to deteriorate. She complained that she and her father saw things from different points of view and that he was too strict. She could not move in with her mother because her apartment was too small. The Applicant moved in with friends. She was refused assistance on the grounds that she did not provide adequate reasons to explain why she could not live with her parents.

The Applicant made attempts to resolve disputes with her father by involving her school guidance counsellor and the Children's Aid Society. The father attended these sessions. According to the evidence, the Children's Aid Society had suggested that a temporary absence might be beneficial but had not recommended permanent separation. Nor did the guidance counsellor find the problem severe enough to recommend that the Applicant leave her home.

The Applicant had not suffered any abuse and had left home of her own accord. She was free to return at any time. The Board did not find that there were special circumstances that justified the granting of assistance. **Appeal denied. Decision of the Respondent affirmed.** (12 pp; English)

REFERENCES: O.Reg. 441 s.6(4)(b)

AGE

OTHER INDEX TERMS: CREDIBILITY;
ELIGIBILITY; STUDENTS

File Number: J0626-07

Date of Hearing: March 13, 1991

The Applicant was 16 years of age. She had moved out of her parents' home and was attending a high school located more than 1,000 kilometres from her parents' home. Her attendance and marks at the new school were good. The issue before the Board was whether the Applicant had special circumstances pursuant to subsection 6(4) of Regulation 441. The Applicant was otherwise eligible for assistance as a person in need, subject only to this issue.

The Applicant left home because of her parents' frequent use of narcotics and because an atmosphere of distrust had grown between the Applicant and her parents who had accused her of using drugs and did not believe her when she denied this.

The Board found that special circumstances existed in the Applicant's case. This conclusion was supported by the fact that two other bodies had also found that the Applicant had special or unusual circumstances. First, the municipality in the Applicant's home city had granted her assistance before she moved to her new location, Second, the local Board of Education in the Applicant's new location granted her

principal's request for a waiver of non-resident school fees for the year. **Appeal granted. Decision of the Administrator rescinded.** (9 pp; English)

REFERENCES: O.Reg. 441 s.6(4)(b); Re Pitts and Director of Family Benefits Branch of the Ministry of Community and Social Services, 51 O.R. (2d) 302, (Ont. Div. Ct.)



APPLICATIONS

OTHER INDEX TERMS:
JURISDICTIONAL ISSUES

File Number: J0717-12

Date of Hearing: January 9, 1991

The Applicant requested assistance on four occasions during one month. His application for assistance was not taken on any of these dates. The Administrator had contacted Unemployment Insurance and was told that the Applicant was still listed as receiving benefits and that his case was under investigation. She therefore decided that she could not take an application and that the Applicant was ineligible.

The Board found that the decision not to take an application constituted a refusal of assistance. In this case, the Administrator made the decision to refuse assistance, but not in the form prescribed in the legislation. She made her decisions without allowing the

GENERAL WELFARE ASSISTANCE ACT

Applicant to make a proper application. In the Board's view, if the Board did not have jurisdiction to hear this appeal, the only recourse for the Applicant would be a costly and time-consuming judicial review by the courts. This effectively leaves the Applicant without access to the appeal process which clearly violates provincial legislation and the Canada Assistance Plan. The Board concluded that the decisions not to take applications in this case amounted to denials of assistance which the Board has jurisdiction to review.

The Applicant was in a program sponsored by Unemployment Insurance for people who were having difficulty finding employment. The program allowed him to work part time but he had had little work. The Board found that the Applicant was a person in need because of his inability to obtain regular employment. Regarding his budgetary requirements, at the time of his requests for assistance he stated that he had no income but that he did have expenses related to caring for his family. There was, however, some uncertainty about his part-time earnings and his wife's income. The Board, therefore, found that the Applicant might qualify for assistance as a person in need whose budgetary requirements exceeded his income and referred the matter back to the Administrator. **Referred back.** (12 pp; English)

REFERENCES: General Welfare Assistance Act s.11

AVAILABLE FINANCIAL RESOURCE

File Number: J0503-13

Date of Hearing: October 30, 1990

The Recipient, a 44-year-old married man who lived with his wife and three dependent children, was found ineligible for assistance. After supplying additional information, he was granted assistance. However, the Administrator deducted \$500 per month from the Recipient's assistance to account for financial compensation that he could have received had he sold his taxicab owner's licence which was valued at between \$70,000 and \$90,000. The Recipient appealed this decision.

The issues to be determined by the Board were whether the Recipient was making reasonable efforts to realize a financial resource from his asset of a taxi driver's plate and whether the Administrator was correct in reducing the benefit by \$500 per month.

The Recipient acquired a taxi driver and livery licence in his own name in 1988 which gave him the right to drive a taxi whether it was his own or rented. From that time he drove a rented taxi for a day or two per month. The Recipient transferred his taxi plate number to a numbered company of which he is the only shareholder. The numbered company later leased out the taxi plate to a third party for a five-year period. The total rent for the period was \$30,000. The total amount was received at the

time of signing the lease but was later stolen from the Recipient.

A reading of both the lease and the trust agreement relating to the lease indicated that the Recipient could have terminated the lease although he required the consent of the lessee and would have been required to pay a penalty. The Recipient claimed that he could not dispose of the asset without a loss and that he was intending to sell it after the lease expired. His representative argued that since it could not be presently sold at fair market value, the Recipient should not be required to sell it prior to expiry. Since it was not available to sell, it was not a liquid asset.

The Board found that there was no conclusive evidence that the Recipient would lose money on the sale of the taxicab owner's plate. There is no indication that he made any effort to gain access to this financial resource. The Board concluded that the Administrator's decision to reduce the Recipient's allowance was acceptable. **Appeal denied. Decision of the Administrator affirmed.** (17 pp; English)

REFERENCES: nil



CREDIBILITY

OTHER INDEX TERMS: LIQUID ASSETS

File Number: J0814-16

Date of Hearing: January 22, 1991

The Applicant applied for assistance as a single employable person after his unemployment insurance benefits finished. He was denied assistance on the grounds that he had transferred available liquid assets for inadequate consideration.

The evidence in this case was conflicting. The Applicant had a doll collection. He testified that he had explained to his case worker that some of them were porcelain and of value while others were of plastic or cloth and of little value. He testified that the porcelain dolls might appreciate and have an ultimate value of \$6,000.

The case worker testified that the Applicant had informed her that he had a collection of nineteen porcelain dolls on which he placed a value of \$6,000. The case worker observed the dolls and testified that all of them appeared to be porcelain and none appeared to be plastic or cloth. She further testified that the Applicant had told her that the collection was for investment purposes.

The Applicant suggested that he may have misled the case worker as to the possible future value of the porcelain dolls. Moreover, he testified that at the time of his application for assistance he was in the process of giving the porcelain dolls to a friend as a gift. He did not have receipts for

GENERAL WELFARE ASSISTANCE ACT

all of the dolls. The Applicant said that he did not know how to go about selling them.

The Board found that the spokesperson for the Administrator was a credible witness. Moreover, her statement about the alleged value of the dolls was corroborated by the application form. The Applicant was not a reliable witness. His statements were unconvincing and contradicted the documentary evidence. Moreover, he testified that the reason he had given the collection away was because he had been denied welfare. The Applicant could not produce any evidence of the value of the dolls nor any evidence to show that he had made any serious attempt to sell the collection. Therefore, the Board found that the doll collection was a liquid asset which had a value in excess of the amount permitted and which could be readily converted into cash. **Appeal denied. Decision of the Administrator affirmed.** (12 pp; English)

REFERENCES: Re Pitts and Director of Family Benefits Branch of the Ministry of Community and Social Services (1985), 51 O.R. (2d) 302, (Ont. Div. Ct.)



ELIGIBILITY

OTHER INDEX TERMS: DEPENDENT ADULTS; PERSON IN NEED; S.T.E.P. PROGRAM

File Number: J1017-06

Date of Hearing: March 12, 1991

The Applicant applied for assistance after his employment ended because of an indefinite lay-off. His wife worked full time but was off because of a brief plant lay-off. He was refused on the grounds that he was categorically ineligible because his wife was considered to be working full time and because the principle family provider was therefore not absent.

The Administrator's spokesperson testified that it was local policy not to top up full-time wages. Instead, the local Administrator had adopted a policy of "categorical eligibility" based on 130 hours of work per month irrespective of the person's earnings. She pointed out that topping up wages was not mandatory under the Supports to Employment Program (S.T.E.P.). The Applicant's representative argued that the legislation does not exempt a family from assistance simply because the spouse becomes employed. There is no mention in the regulations of ineligibility if a dependent adult enters the work force on a full-time basis. In fact, some sections anticipate a dependent adult being "engaged in" full-time work.

In the Board's view, the Administrator is permitted, and often required, to establish implementation guidelines for the legislation. The adoption of the 130-hour rule defining regular employment is, however, an arbitrary

approach. To determine a person in need under s.1(2)(a), the words "regular employment" must be interpreted in a manner which does not rely on number of hours worked but on budgetary considerations.

The Board found that the Applicant was a person in need due to his inability to obtain regular employment, despite his willingness and efforts to secure employment. The Board also found that the Applicant was the head of a family and that his spouse met the requirements for eligibility as a dependent adult. Therefore, the Applicant was eligible as a person who had budgetary requirements in excess of the family's income. **Appeal granted. Decision of the Administrator rescinded.** (16 pp; English)

REFERENCES: General Welfare Assistance Act s.1(2)(a); O.Reg. 441 s.11(1); Interpretation Act, R.S.O. 1980, c.219 s.10; Re Bicknell Freighters and Highway Transport Board (1977), 77 DLR 417, (Man.C.A.); Champagne v. the Administrator, April 24, 1986, (S.C.O.) (unreported); "head of a family"; "regular employment"



FOSTER PARENTS AND CHILDREN

File Number: J0628-02

Date of Hearing: January 25, 1991

A 13-year-old girl approached the

local family services for a placement due to ongoing problems in her own home. She was placed in a group home for a two-week period. While in this temporary placement she was charged with a criminal offence. About this time she decided to leave the group home in order to live with the family of her friend, the Applicant.

The Applicant applied for a foster allowance on behalf of the child on two occasions. The Administrator refused on the grounds that there were other viable alternatives for the child. Specifically, the child could take an available foster care placement through regular channels, go to live with her grandmother, or return to live with her mother.

The Board noted that, as a result of the criminal charge and a subsequent judge's directive, there was a court order in place to allow the child to reside in the Applicant's home. The Board further noted that the Administrator's own investigation found that the child was quite happy, wanted to live with the Applicant and was permitted by a court order to reside at that address. The Board concluded that, in these circumstances, the availability of a foster care allowance would be most appropriate. **Appeal granted. Decision of the Administrator rescinded.** (17 pp; English)

REFERENCES: nil



GENERAL WELFARE ASSISTANCE ACT

INCOME

OTHER INDEX TERMS:

OVERPAYMENTS; UNEMPLOYMENT INSURANCE

File Number: J0619-04

Date of Hearing: April 23, 1991

The Recipient was laid off because of the bankruptcy of his employer. He received assistance pending receipt of unemployment insurance. Because of a delay in providing documents, unemployment insurance benefits were also delayed, but when benefits began they included a retroactive amount.

The Recipient's unemployment insurance income was \$210 per week. Income tax was deducted from that amount, leaving a net benefit of \$185 weekly. The Administrator calculated the Recipient's income on the gross amount rather than the net and assessed an overpayment. The issue before the Board was whether the deduction of the gross unemployment insurance payment from the Recipient's entitlement was permitted. Specifically, was the income tax portion of the unemployment insurance a payment received by or on behalf of the Recipient?

In the Board's opinion, the plain meaning of the words "payments received ... on behalf of the Recipient" implies that those who receive the benefits do so for the benefit of the Recipient. The phrase clearly includes

funds that a recipient causes to be diverted to someone else, but it is not obvious whether it applies to funds which a recipient is prevented from receiving because of the Income Tax Act. The legislation specifically excludes the total amount of deductions for income tax, Canada Pension Plan and unemployment insurance from the definition of income when these are deducted from wages, salaries, and casual earnings. These are deductions over which the individual has no control. In the Board's opinion, the income tax deduction from the Recipients unemployment benefits is similar. Moreover, in the Board's view, these funds are not available to meet the Recipient's basic needs. In the Board's opinion, using the gross amount for calculating assistance results in the Recipient being effectively charged twice for income tax. In the first instance, the Unemployment Insurance Commission deducts the amount owed for tax. In the second instance, his welfare payments are also reduced by the same income tax amount.

Nothing in the legislation suggests that this issue has been addressed. Instances of legislative ambiguity should be resolved in favour of the needy. **Appeal granted. Decision of the Administrator rescinded.** (9 pp English; 10 pp French)

REFERENCES: O.Reg. 441 s.13(1) and 13(2)12; Re Baxter and Social Assistance Review Board, December 8, 1988, (S.C.O.) (unreported); Kerr v.

Metropolitan Toronto (1991), 4 O.R. (3d) 430, (Ont. Div. Ct.); "available"; "payments received by or on behalf of an applicant"



LABOUR DISPUTES

OTHER INDEX TERMS: EMERGENCY ASSISTANCE; JURISDICTIONAL ISSUES; RECONSIDERATIONS

File No: H0608-10R

Date of Hearing: December 6, 1990

The Applicant was a sole-support parent with two children. She was on strike for approximately five months. A week after the strike began she found employment as a taxi driver, which continued for approximately three months. She left her job because she did not want to work the night shift and because of family problems which developed.

When the strike was over the memorandum of agreement was ratified by the union on one day and by the employer on the next. Employees were called back to work eleven days later. The Applicant applied for assistance on the day the employer signed the agreement and was found ineligible.

The preliminary issues were whether the Board has jurisdiction to hear appeals related to emergency assistance and whether there were grounds for a reconsideration. The

Applicant claimed that the original decision of the Board was correct. The Administrator argued that the Board did not have jurisdiction to hear an appeal on emergency assistance because emergency assistance is not general assistance and is not appealable to the Board. The Board found that it has jurisdiction to hear the appeal and that emergency assistance is general assistance. The Board also found that because of certain ambiguous phrasing in the Board's original decision, there were grounds for holding a reconsideration hearing.

In the Board's view, the Applicant's eligibility did not turn on the question of whether the strike ended before or after the application was made but on whether she was a person in need. The Board found that the Applicant was not a person in need because she was the "head of a family whose spouse is absent." Her reasons for leaving her job as a taxi driver were the inappropriateness of the job as well as the family problems resulting from the inappropriateness. During the strike, the Applicant could have made alternative child care arrangements. After the strike there was no evidence that her family problems required her to remain at home, thereby changing her status from "employee" to "head of a family" for eligibility purposes.

Nor was the Applicant a person in need by reason of her relationship to employment. During the strike the Applicant was still an employee,

GENERAL WELFARE ASSISTANCE ACT

whose job, along with her right to strike, was protected under the Ontario Labour Relations Act. She was, however, without regular employment. Because she worked while on strike, she demonstrated that she was able to engage in remunerative employment, but she was not so engaged when she applied for assistance. The Applicant, although technically an employee and employable, was in practical terms unemployed. When she quit her job as a taxi driver she did not seek other employment, nor did she appear willing to take any employment for which she was physically capable. **Appeal denied. Original decision of the Board rescinded. Decision of the Administrator upheld.** (31 pp; English)

REFERENCES: O.Reg. 441 s.1(2)(a) and (b); s.3(1)(b); s.3(1)(d); Chemical Developments of Canada Ltd. (1975), 8 L.A.C.(2d) 401; SARB Decision H-06-12-15R; "emergency assistance"

NOTE: Since the release of this decision, O.Reg. 441 s.3(2) has been amended. The changes may affect the relevance of this decision. Please refer to an authoritative publication for the complete amended text. Some of the additions to the regulation read:

(2a) In determining whether a person referred to in clauses (1)(b), (ba) or (c) is making reasonable efforts to secure employment, the likelihood of the person obtaining employment that will increase his or

her income shall be taken into account.

(2b) An applicant or recipient whose normal income is reduced because he or she is engaged in a labour dispute shall be deemed to be in receipt of a monthly income from employment equal to the amount he or she received from that source in the month before his or her income was first affected by the dispute.

(2c) Subsection (2b) does not apply if the applicant or recipient has resigned or been dismissed from employment.



LABOUR DISPUTES

OTHER INDEX TERMS: EMERGENCY ASSISTANCE; JURISDICTIONAL ISSUES; RECONSIDERATIONS

File Number: H0612-15R

Date of Hearing: November 6, 1991

The Applicant was a sole-support parent with two children and was employed as an office clerk. She had been on leave from her employment for several months to further her education when a strike was called. The strike lasted for approximately five months. When the Applicant finished her leave of absence she began picket duty and found a part-time, temporary job for the month of July. When it ended she again looked for work, making many inquiries. A

few days before her application for assistance, she found a part-time job which was to begin after the date of the call back to work. Wages from this job would not be received until some time later.

At the end of the strike, a memorandum of agreement was ratified by the union and by the employer a day later. There was confusion about the date of recall, which proved to be a week later than the Applicant had expected. The Applicant then applied for assistance and was denied on the grounds that she did not qualify as a "person in need."

The preliminary issues to be determined by the Board were whether the Board has jurisdiction to hear appeals related to emergency assistance and whether there were grounds for holding a reconsideration hearing.

The Administrator's legal representative argued that the Administrator has discretion concerning emergency assistance. Moreover, as demonstrated by two different application procedures, emergency assistance is not general assistance. General assistance is the only situation which is appealable; a situation of emergency is not. The Applicant's legal representative argued that the Board could hear the appeal because the Applicant was refused assistance on the grounds of subsection 3(1)(b) and that there was

no mention of emergency assistance. Moreover, in its original decision the Board had found the applicant eligible as a person in need and had ordered emergency assistance merely as a manner of payment.

The Board found that what is called "emergency assistance" is not a form of assistance separate from ordinary general assistance. The granting of assistance in emergency cases is not what is discretionary; it is the manner of application that is discretionary.

In its original decision, the Board found that the Applicant was eligible because of her inability to find regular employment. The Administrator's legal representative argued that a reconsideration hearing should be held. The Board found an element of ambiguity in the phrasing of the Board's original decision and that, therefore, a hearing de novo should be held.

There was discussion as to whether the Applicant was a "person in need" because of being a "head of a family whose spouse is absent," or because of being "unable to obtain regular employment." The Applicant's continuing involvement in the labour force was the reason for her being a "person in need." She had sought alternate work during the strike but had been unable to find it. The Board found that the Applicant was an "unemployed person" who was employable and who had provided convincing evidence that she was

GENERAL WELFARE ASSISTANCE ACT

willing to undertake any employment and that she had made reasonable efforts to secure employment. The Board considered her eligibility under s.1(2)(a) of Regulation 441 and therefore found that she was unable to obtain regular employment.

In terms of budgetary requirements, certain amounts of money became available to the Applicant after the return to work. These were unforeseen at the time of application. The Board therefore found that she was a person in need at the time of application and upheld its original decision. **Appeal granted. Decision of the Social Assistance Review Board affirmed, thereby rescinding the decision of the Administrator.** (31pp; English)

REFERENCES: General Welfare Assistance Act s.9; Labour Relations Act s.1(1)(o); O.Reg. 441 s.8; s. 1(2)(a); Chemical Developments of Canada Ltd. (1975), 8 L.A.C. (2d) 401

NOTE: See Note at File Number H0608-10R



LABOUR DISPUTES

OTHER INDEX TERMS: DISCRETION;
UNEMPLOYMENT DUE TO
CIRCUMSTANCES NOT WITHIN
CONTROL

File Number: J1014-10

Date of Hearing: March 6, 1991

The Applicant applied for assistance when the employer, for whom he had worked for two weeks, locked out its employees. The application was denied. The issue before the Board was whether the lockout placed the Applicant in a state of unemployment and, if so, whether that state of unemployment was due to circumstances beyond his control. If so, was the Administrator's decision to deny assistance a reasonable exercise of discretionary power under subsection 3(3)(a) of Regulation 441?

Although the Applicant had been locked out of his place of employment the Board found that the Applicant was still considered to be an "employee" of the company. However, as an "employee" he did not have regular employment because of the lockout. The Board therefore found that the Applicant was an employable person who was not engaged in full-time regular employment at the time of the decision to deny assistance.

The Administrator claimed that the Applicant's unemployment was within his own control. He worked in a unionized plant and a union is usually considered to be the agent of the employee. Because the actions of the union resulted in the lockout, the Administrator claimed that the Applicant's unemployment was within his own control.

However, the Administrator's authority to deny or reduce assistance in subsection 3(3)(a) of Regulation 441 is discretionary. The Applicant had been laid off from his previous job through no fault of his own. He had been working at the new place only two weeks when the employees were locked out. As a new employee he could not have played any role in the events leading up to the lockout. To find him responsible for his unemployment in these circumstances was, in effect, saying that his responsibility arose from his accepting the job in a unionized work place. Had he not accepted the job because the workplace was unionized, assistance would have been denied on the grounds that he was not willing to take work for which he was physically capable. The Board found that it was reasonable, in this case, for discretion to be exercised in favour of the Applicant. **Appeal granted. Decision of the Administrator rescinded.** (8 pp; English)

REFERENCES: O.Reg. 441 s.3(3)(a); "regular employment"



OVERPAYMENTS

OTHER INDEX TERMS:
RECONSIDERATIONS; SHELTER

File Number: G0829-04R
Date of Hearing: July 20, 1990

The Recipient and his family were

receiving General Welfare Assistance. The Recipient requested assistance to secure a new apartment. The landlord required the payment of first and last months' rent in advance, which totalled more than the Recipient's maximum entitlement. The Administrator provided the Recipient with his maximum entitlement plus an additional \$499 as special assistance. This was the yearly maximum that a Recipient could receive as special assistance. The total was still not enough for the Recipient to meet his regular expenses and move into the new apartment. The Administrator therefore provided an additional \$126 which was treated as an overpayment.

The Recipient appealed the Administrator's decision to recover the overpayment. The issue on reconsideration was whether the Administrator had authority to purposely overpay and then recover it by a reduction in the Recipient's ongoing assistance.

The Administrator argued that the \$126 was an intentional overpayment of general assistance which was made on the understanding and expectation that it was recoverable. In the Board's opinion, there is no authority to make this type of payment.

The Administrator further argued that if the assistance provided is discretionary rather than mandatory the Recipient is not entitled to it and it is therefore recoverable. This implies that all discretionary assistance would

GENERAL WELFARE ASSISTANCE ACT

therefore be recoverable. The Board concluded that s.12 only authorizes the recovery of assistance which was paid in error, whether it was mandatory or discretionary. In this case a specific decision was made to pay the Recipient the \$126. It was not paid in error and could not be recovered under s.12. **Original decision confirmed.** (18 pp; English)

REFERENCES: General Welfare Assistance Act, s.12; Brown v. Bouwkamp (1975), 8 O.R. (2d) 363, (Ont. Div. Ct.); Re Harris and Ministry of Community and Social Services (1975), 8 O.R. (2d) 721, (Ont. Div. Ct.); "entitled"



SINGLE PERSON

OTHER INDEX TERMS:
CO-RESIDENCE; LIVING SEPARATE
AND APART

File Number: J0423-01
Date of Hearing: October 5, 1990

The Applicant, a 58-year-old man in ill health, applied for assistance as a single, separated person. Because of his health, the Applicant had no means of support other than welfare.

He resided in the same residence as his legally married spouse. Their relationship was poor and both individuals considered each other to be living separate and apart. The wife had asked her husband to leave the

residence but their children had interceded because of his poor health. The Applicant had applied for alternative housing but was on a waiting list. He refused to have his spouse's income considered with his application but wanted to be considered a single person. He was refused assistance on the grounds that he was living with his spouse.

The Board found that the Applicant was not living with his spouse and was a single person. He was living in the same residence as his wife only because he had no alternative housing available that would also allow him to live in a safe environment for his health. The Applicant and his wife had a lifestyle of living separate and apart, including having separate freezers, separate bedrooms, and separate financial arrangements. Neither walked freely within the residence when the other person was present. They attended social functions separately and did not act as a couple at family functions. **Appeal granted. Decision of the Administrator rescinded.** (8 pp; English)

REFERENCES: nil



STUDENTS

OTHER INDEX TERMS: DISCRETION

File Number: J0715-01
Date of Hearing: December 14, 1990

The Applicant was 26 years old, married with a young child and had a Grade 8 education. He quit his job and enrolled in an Alternative Education program funded by the Ministry of Education. The program offers courses which are fully approved by the Ministry of Education. This program would enable the Applicant to begin an apprenticeship program.

The Applicant admitted that he left his job to return to school but testified that his job was insecure and that he was very close to being laid off. Once he learned that he had been accepted into the program he had been obliged to make an immediate decision whether to accept the offer and had been under the impression that he would receive unemployment benefits while he was in school. He applied for unemployment and later for welfare as an employable unemployed person. His application was denied on the grounds that his unemployment was due to circumstances within his own control. The Administrator did not consider the Applicant's possible eligibility as a student.

The Applicant argued that he did not quit his employment with the intention of making himself and his family dependent upon the welfare system but rather to obtain enough schooling so that he could ultimately make his family economically independent. He did not obtain the approval of the Administrator prior to enrolling in the program, as required

by the legislation, but submitted that it was within the discretion of the Administrator to grant such approval.

The Board found that although the Applicant was employed, his employment was precarious and did not ensure that he could provide for his family. Moreover, there were special circumstances in this case which explained why approval for attendance in the program was not sought. The Board concluded that the Administrator should have exercised discretion to approve attendance in the program. **Appeal granted. Decision of the Administrator rescinded.** (10 pp; English)

REFERENCES: nil

PART III

DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

BUSINESS EQUIPMENT

OTHER INDEX TERMS: DISCRETION

File Number: J0530-07

Date of Hearing: October 3, 1990

The Recipient was a disabled person with multiple sclerosis which resulted in low vision and fatigue. Over a three-year period he had submitted

VOCATIONAL REHABILITATION SERVICES ACT

proposals to the Director requesting equipment to establish a small business in caning and wicker. According to the Director, the Recipient had been involved in the caning and wicker business in some capacity for several years. The Director refused to provide equipment on the grounds that the business was ongoing rather than an initial business and that the business was not viable.

The issues before the Board were: was the Recipient's proposed business a new business or an ongoing business? Specifically, was the machinery considered to be necessary initial occupational and business tools, equipment, and supplies, as required by the legislation, and would the Recipient's proposed business enable him to become capable of pursuing regularly a substantially gainful occupation?

The Board found that, in the early years, the Recipient's involvement was a learning experience and a hobby. In 1988 his activities began to resemble a business. He continued to work over a two-year period, at the end of which time his third proposal was also denied funding by the Director. In the Board's view it was not reasonable to expect the Recipient to have no involvement with wicker and caning while waiting for the Director's decision. The Board also found that the tools used by the Recipient were either owned by him prior to the onset of his disability or were designed for sighted hobbyists. The

tools requested in his most recent proposal were, therefore, initial business and occupational tools.

In order to qualify for services, the Recipient's occupation had to provide profit or remuneration comparable to a competitive employment situation. The Recipient prepared three successive estimates of projected income. Each predicted an increasingly positive financial return. The Board could not accept these forecasts because the figures were not compatible with norms in the industry for businesses equivalent to the Recipient's. Moreover, the most realistic of the estimates would, after deductions, leave the Recipient with a rate of return that did not amount to a substantially gainful occupation. The Board concluded that the Director did not wrongfully exercise his discretion in deciding that the proposed business was not a "substantially gainful occupation." **Appeal denied. Decision of the Director affirmed.** (24pp; English)

REFERENCES: Vocational Rehabilitation Services Act s.5(a); 5(h); 8



CUMULATIVE INDEX

This index includes cases published in Volume 1:1 and Volume 1:2 of
SUMMARIES OF DECISIONS.

**PART I: DECISIONS UNDER THE
FAMILY BENEFITS ACT**

| TOPIC/FILE NUMBER | WHERE PUBLISHED | | |
|------------------------------|-----------------|------------|----------|
| APPLICATIONS | | | |
| G0901-07 | Page 5 | Volume 1:2 | JAN 1992 |
| AVAILABLE FINANCIAL RESOURCE | | | |
| H1011-10 | Page 8 | Volume 1:1 | OCT 1991 |
| J0304-20 | Page 6 | Volume 1:1 | OCT 1991 |
| J0910-10 | Page 11 | Volume 1:2 | JAN 1992 |
| CATEGORICAL ELIGIBILITY | | | |
| F0929-17R | Page 5 | Volume 1:1 | OCT 1991 |
| G0212-06R | Page 9 | Volume 1:1 | OCT 1991 |
| H0418-09 | Page 10 | Volume 1:1 | OCT 1991 |
| H1121-16 | Page 5 | Volume 1:1 | OCT 1991 |
| COHABITATION AGREEMENT | | | |
| H0418-09 | Page 10 | Volume 1:1 | OCT 1991 |
| CREDIBILITY | | | |
| G0922-08 | Page 14 | Volume 1:2 | JAN 1992 |
| H0927-08 | Page 10 | Volume 1:1 | OCT 1991 |
| J0304-20 | Page 6 | Volume 1:1 | OCT 1991 |
| DISABLED PERSON | | | |
| J0612-02 | Page 7 | Volume 1:2 | JAN 1992 |
| DISSENTING OPINIONS | | | |
| H0601-02R | Page 12 | Volume 1:2 | JAN 1992 |
| EXTENSION OF TIME | | | |
| H0321-05 | Page 7 | Volume 1:1 | OCT 1991 |
| H0710-11R | Page 6 | Volume 1:2 | JAN 1992 |
| H0927-08 | Page 10 | Volume 1:1 | OCT 1991 |

CUMULATIVE INDEX

| | | | |
|---|---------|------------|----------|
| H1122-06 | Page 7 | Volume 1:1 | OCT 1991 |
| FAILURE TO PROVIDE INFORMATION G0609-18 | Page 8 | Volume 1:1 | OCT 1991 |
| FINANCIAL HARDSHIP H1122-06 | Page 7 | Volume 1:1 | OCT 1991 |
| HOMES, HOSPITALS AND INSTITUTIONS, PATIENT OR RESIDENT IN J0612-02 | Page 7 | Volume 1:2 | JAN 1992 |
| INCOME J0216-12 | Page 8 | Volume 1:2 | JAN 1992 |
| J0606-06 | Page 17 | Volume 1:2 | JAN 1992 |
| JOINT CUSTODY F0929-17R | Page 5 | Volume 1:1 | OCT 1991 |
| H1121-16 | Page 5 | Volume 1:1 | OCT 1991 |
| JURISDICTIONAL ISSUES G0706-02 | Page 9 | Volume 1:2 | JAN 1992 |
| G0901-07 | Page 5 | Volume 1:2 | JAN 1992 |
| LIQUID ASSETS G0609-18 | Page 8 | Volume 1:1 | OCT 1991 |
| H1011-10 | Page 8 | Volume 1:1 | OCT 1991 |
| J0216-12 | Page 8 | Volume 1:2 | JAN 1992 |
| J0520-14 | Page 10 | Volume 1:2 | JAN 1992 |
| J0701-11 | Page 16 | Volume 1:2 | JAN 1992 |
| J0910-10 | Page 11 | Volume 1:2 | JAN 1992 |
| MEDICAL ADVISORY BOARD G0212-06R | Page 9 | Volume 1:1 | OCT 1991 |
| H0601-02R | Page 12 | Volume 1:2 | JAN 1992 |
| H0927-08 | Page 10 | Volume 1:1 | OCT 1991 |
| MEDICAL CONDITIONS G0609-18 | Page 8 | Volume 1:1 | OCT 1991 |
| H0927-08 | Page 10 | Volume 1:1 | OCT 1991 |
| MOTHER WITH DEPENDENT CHILDREN H1011-10 | Page 8 | Volume 1:1 | OCT 1991 |
| ONUS G0706-02 | Page 9 | Volume 1:2 | JAN 1992 |
| G0922-08 | Page 14 | Volume 1:2 | JAN 1992 |
| OVERPAYMENTS G0706-02 | Page 9 | Volume 1:2 | JAN 1992 |
| H0321-05 | Page 7 | Volume 1:1 | OCT 1991 |

SUMMARIES OF DECISIONS

CUMULATIVE INDEX

| | | | |
|---------------------------------------|---------|------------|----------|
| H1122-06 | Page 7 | Volume 1:1 | OCT 1991 |
| J0216-12 | Page 8 | Volume 1:2 | JAN 1992 |
| J0606-03 | Page 15 | Volume 1:2 | JAN 1992 |
| J0606-06 | Page 17 | Volume 1:2 | JAN 1992 |
| PENSIONS AND PENSIONERS | | | |
| G0706-02 | Page 9 | Volume 1:2 | JAN 1992 |
| PERMANENTLY UNEMPLOYABLE PERSON | | | |
| G0212-06R | Page 9 | Volume 1:1 | OCT 1991 |
| H0601-02R | Page 12 | Volume 1:2 | JAN 1992 |
| H0927-08 | Page 10 | Volume 1:1 | OCT 1991 |
| RECONSIDERATIONS | | | |
| F0929-17R | Page 5 | Volume 1:1 | OCT 1991 |
| G0212-06R | Page 9 | Volume 1:1 | OCT 1991 |
| G0615-05R | Page 11 | Volume 1:1 | OCT 1991 |
| H0601-02R | Page 12 | Volume 1:2 | JAN 1992 |
| H0710-11R | Page 6 | Volume 1:2 | JAN 1992 |
| SHELTER | | | |
| H1122-06 | Page 5 | Volume 1:1 | OCT 1991 |
| J0617-01 | Page 14 | Volume 1:2 | JAN 1992 |
| SINGLE PARENT WITH DEPENDENT CHILDREN | | | |
| F0929-17R | Page 5 | Volume 1:1 | OCT 1991 |
| G0615-05R | Page 11 | Volume 1:1 | OCT 1991 |
| H0216-18 | Page 11 | Volume 1:1 | OCT 1991 |
| H0418-09 | Page 10 | Volume 1:1 | OCT 1991 |
| H1121-16 | Page 7 | Volume 1:1 | OCT 1991 |
| J0304-20 | Page 6 | Volume 1:1 | OCT 1991 |
| SINGLE PERSON | | | |
| G0615-05R | Page 11 | Volume 1:1 | OCT 1991 |
| G0902-14 | Page 12 | Volume 1:1 | OCT 1991 |
| H0216-18 | Page 11 | Volume 1:1 | OCT 1991 |
| H0321-05 | Page 7 | Volume 1:1 | OCT 1991 |
| H0418-09 | Page 10 | Volume 1:1 | OCT 1991 |
| SPOUSAL DECLARATION | | | |
| G0902-14 | Page 12 | Volume 1:1 | OCT 1991 |
| SPOUSE | | | |
| G0615-05R | Page 11 | Volume 1:1 | OCT 1991 |
| G0902-14 | Page 12 | Volume 1:1 | OCT 1991 |
| G0922-08 | Page 14 | Volume 1:2 | JAN 1992 |
| H0216-18 | Page 11 | Volume 1:1 | OCT 1991 |
| H0418-09 | Page 10 | Volume 1:1 | OCT 1991 |
| J0606-03 | Page 15 | Volume 1:2 | JAN 1992 |

CUMULATIVE INDEX

TRUSTS

| | | | |
|----------|---------|------------|----------|
| H1011-10 | Page 8 | Volume 1:1 | OCT 1991 |
| J0520-14 | Page 10 | Volume 1:1 | JAN 1992 |
| J0701-11 | Page 16 | Volume 1:2 | JAN 1992 |

VISITORS

| | | | |
|----------|---------|------------|----------|
| J0606-06 | Page 17 | Volume 1:2 | JAN 1992 |
|----------|---------|------------|----------|

PART II: DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

AGE

| | | | |
|----------|---------|------------|----------|
| G1208-21 | Page 13 | Volume 1:1 | OCT 1991 |
| H1008-15 | Page 18 | Volume 1:2 | JAN 1992 |
| J0626-07 | Page 19 | Volume 1:2 | JAN 1992 |

APPLICATIONS

| | | | |
|----------|---------|------------|----------|
| J0717-12 | Page 19 | Volume 1:2 | JAN 1992 |
|----------|---------|------------|----------|

AVAILABLE FINANCIAL RESOURCE

| | | | |
|----------|---------|------------|----------|
| J0503-13 | Page 20 | Volume 1:2 | JAN 1992 |
|----------|---------|------------|----------|

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

| | | | |
|----------|---------|------------|----------|
| G1208-21 | Page 13 | Volume 1:1 | OCT 1991 |
|----------|---------|------------|----------|

CO-RESIDENCE

| | | | |
|----------|---------|------------|----------|
| J0216-15 | Page 17 | Volume 1:1 | OCT 1991 |
| J0423-01 | Page 30 | Volume 1:2 | JAN 1992 |

CREDIBILITY

| | | | |
|----------|---------|------------|----------|
| H1008-15 | Page 18 | Volume 1:2 | JAN 1992 |
| H1108-02 | Page 13 | Volume 1:1 | OCT 1991 |
| J0626-07 | Page 19 | Volume 1:2 | JAN 1992 |
| J0814-16 | Page 21 | Volume 1:2 | JAN 1992 |

DEPENDENT ADULTS

| | | | |
|----------|---------|------------|----------|
| J1017-06 | Page 22 | Volume 1:2 | JAN 1992 |
|----------|---------|------------|----------|

DISCRETION

| | | | |
|-----------|---------|------------|----------|
| E0514-03R | Page 19 | Volume 1:1 | OCT 1991 |
| H0622-02 | Page 17 | Volume 1:1 | OCT 1991 |
| J0715-01 | Page 30 | Volume 1:1 | JAN 1992 |
| J1014-10 | Page 28 | Volume 1:2 | JAN 1992 |

CUMULATIVE INDEX

ELIGIBILITY

| | | | |
|----------|---------|------------|----------|
| G0803-04 | Page 20 | Volume 1:1 | OCT 1991 |
| G0814-14 | Page 14 | Volume 1:1 | OCT 1991 |
| G1208-21 | Page 13 | Volume 1:1 | OCT 1991 |
| H0622-02 | Page 17 | Volume 1:1 | OCT 1991 |
| H0718-01 | Page 18 | Volume 1:1 | OCT 1991 |
| H1008-15 | Page 18 | Volume 1:2 | JAN 1992 |
| H1024-05 | Page 16 | Volume 1:1 | OCT 1991 |
| J0626-07 | Page 19 | Volume 1:2 | JAN 1992 |
| J0807-03 | Page 19 | Volume 1:1 | OCT 1991 |
| J1017-06 | Page 22 | Volume 1:2 | JAN 1992 |

EMERGENCY ASSISTANCE

| | | | |
|-----------|---------|------------|----------|
| H0608-10R | Page 25 | Volume 1:2 | JAN 1992 |
| H0612-15R | Page 26 | Volume 1:2 | JAN 1992 |

EMPLOYABLE PERSON

| | | | |
|----------|---------|------------|----------|
| H0622-02 | Page 17 | Volume 1:1 | OCT 1991 |
| H0718-01 | Page 18 | Volume 1:1 | OCT 1991 |
| H1024-05 | Page 23 | Volume 1:1 | OCT 1991 |

FAILURE TO PROVIDE INFORMATION

| | | | |
|----------|---------|------------|----------|
| H1108-02 | Page 13 | Volume 1:1 | OCT 1991 |
|----------|---------|------------|----------|

FOSTER PARENTS AND CHILDREN

| | | | |
|----------|---------|------------|----------|
| J0628-02 | Page 23 | Volume 1:2 | JAN 1992 |
|----------|---------|------------|----------|

HOME VISIT

| | | | |
|-----------|---------|------------|----------|
| E0514-03R | Page 19 | Volume 1:1 | OCT 1991 |
|-----------|---------|------------|----------|

INCOME

| | | | |
|----------|---------|------------|----------|
| J0619-04 | Page 24 | Volume 1:2 | JAN 1992 |
|----------|---------|------------|----------|

JURISDICTIONAL ISSUES

| | | | |
|-----------|---------|------------|----------|
| G1208-21 | Page 13 | Volume 1:1 | OCT 1991 |
| H0608-10R | Page 25 | Volume 1:2 | JAN 1992 |
| H0612-15R | Page 26 | Volume 1:2 | JAN 1992 |
| J0717-12 | Page 19 | Volume 1:2 | JAN 1992 |

LABOUR DISPUTES

| | | | |
|-----------|---------|------------|----------|
| H0608-10R | Page 25 | Volume 1:2 | JAN 1992 |
| H0612-15R | Page 26 | Volume 1:2 | JAN 1992 |
| J1014-10 | Page 28 | Volume 1:2 | JAN 1992 |

LIQUID ASSETS

| | | | |
|----------|---------|------------|----------|
| J0814-16 | Page 21 | Volume 1:2 | JAN 1992 |
|----------|---------|------------|----------|

LIVING SEPARATE AND APART

| | | | |
|----------|---------|------------|----------|
| J0423-01 | Page 30 | Volume 1:2 | JAN 1992 |
|----------|---------|------------|----------|

CUMULATIVE INDEX

| | | | | |
|------------------------------------|-----------|---------|------------|----------|
| ONUS | | | | |
| | H1108-02 | Page 13 | Volume 1:1 | OCT 1991 |
| ONTARIO STUDENT ASSISTANCE PROGRAM | | | | |
| | J0807-03 | Page 19 | Volume 1:1 | OCT 1991 |
| OVERPAYMENTS | | | | |
| | G0829-04R | Page 29 | Volume 1:2 | JAN 1992 |
| | J0619-04 | Page 24 | Volume 1:2 | JAN 1992 |
| PERSON IN NEED | | | | |
| | J1017-06 | Page 22 | Volume 1:2 | JAN 1992 |
| RECONSIDERATIONS | | | | |
| | E0514-03R | Page 19 | Volume 1:1 | OCT 1991 |
| | G0829-04R | Page 29 | Volume 1:2 | JAN 1992 |
| | H0608-10R | Page 25 | Volume 1:2 | JAN 1992 |
| | H0612-15R | Page 26 | Volume 1:2 | JAN 1992 |
| REFUGEES | | | | |
| | G0814-14 | Page 14 | Volume 1:1 | OCT 1991 |
| RESIDENCE | | | | |
| | E0514-03R | Page 19 | Volume 1:1 | OCT 1991 |
| | G0814-14 | Page 14 | Volume 1:1 | OCT 1991 |
| | J0311-02 | Page 15 | Volume 1:1 | OCT 1991 |
| SHELTER | | | | |
| | E0514-03R | Page 19 | Volume 1:1 | OCT 1991 |
| | G0829-04R | Page 29 | Volume 1:2 | JAN 1992 |
| SINGLE PERSON | | | | |
| | J0216-15 | Page 17 | Volume 1:1 | OCT 1991 |
| | J0423-01 | Page 30 | Volume 1:2 | JAN 1992 |
| SPOUSE | | | | |
| | H1108-02 | Page 13 | Volume 1:1 | OCT 1991 |
| | J0216-15 | Page 17 | Volume 1:1 | OCT 1991 |
| S.T.E.P. | | | | |
| | H1024-05 | Page 16 | Volume 1:1 | OCT 1991 |
| | J1017-06 | Page 22 | Volume 1:2 | JAN 1992 |
| STUDENTS | | | | |
| | H0622-02 | Page 17 | Volume 1:1 | OCT 1991 |
| | H0718-01 | Page 18 | Volume 1:1 | OCT 1991 |
| | H1008-15 | Page 18 | Volume 1:2 | JAN 1992 |
| | J0626-07 | Page 19 | Volume 1:2 | JAN 1992 |
| | J0715-01 | Page 30 | Volume 1:2 | JAN 1992 |
| | J0807-03 | Page 19 | Volume 1:1 | OCT 1991 |

SUMMARIES OF DECISIONS

CUMULATIVE INDEX

| | | | | |
|--|---------|------------|----------|--|
| TRANSIENT OR HOMELESS PERSONS | | | | |
| E0514-03R | Page 19 | Volume 1:1 | OCT 1991 | |
| UNEMPLOYMENT DUE TO CIRCUMSTANCES NOT WITHIN CONTROL | | | | |
| G0803-04 | Page 20 | Volume 1:1 | OCT 1991 | |
| J0619-04 | Page 24 | Volume 1:2 | JAN 1992 | |
| J1014-10 | Page 28 | Volume 1:2 | JAN 1992 | |
| UNEMPLOYMENT INSURANCE | | | | |
| J0619-04 | Page 24 | Volume 1:2 | JAN 1992 | |
| VISITORS | | | | |
| G0814-14 | Page 14 | Volume 1:1 | OCT 1991 | |
| J0311-02 | Page 15 | Volume 1:1 | OCT 1991 | |

PART III: DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

| | | | | |
|------------------------------------|---------|------------|----------|--|
| BUSINESS EQUIPMENT | | | | |
| J0530-07 | Page 31 | Volume 1:2 | JAN 1992 | |
| DISCRETION | | | | |
| J0530-07 | Page 31 | Volume 1:2 | JAN 1992 | |
| EDUCATIONAL PROGRAMS | | | | |
| H0723-04 | Page 21 | Volume 1:1 | OCT 1991 | |
| G0814-22 | Page 21 | Volume 1:1 | OCT 1991 | |
| JURISDICTIONAL ISSUES | | | | |
| H1119-09 | Page 22 | Volume 1:1 | OCT 1991 | |
| ONTARIO STUDENT ASSISTANCE PROGRAM | | | | |
| H1119-09 | Page 22 | Volume 1:1 | OCT 1991 | |
| PRIORITY OF SERVICE | | | | |
| H1119-09 | Page 22 | Volume 1:1 | OCT 1991 | |
| VOCATIONALLY DISABLED | | | | |
| H0723-04 | Page 21 | Volume 1:1 | OCT 1991 | |

CUMULATIVE INDEX

TABLE OF REFERENCES

REFERENCES TO STATUTES AND REGULATIONS

Canadian Charter of Rights and Freedoms

| | | | | |
|--------------|----------|---------|------------|----------|
| s.19(1), (2) | G1208-21 | Page 13 | Volume 1:1 | OCT 1991 |
| s.24(1), (2) | G1208-21 | Page 13 | Volume 1:1 | OCT 1991 |

Constitution Act, 1982

| | | | | |
|------|----------|---------|------------|----------|
| s.52 | G1208-21 | Page 14 | Volume 1:1 | OCT 1991 |
|------|----------|---------|------------|----------|

Divorce Act 1985

| | | | | |
|-----|----------|---------|------------|----------|
| s.8 | J0216-15 | Page 17 | Volume 1:1 | OCT 1991 |
|-----|----------|---------|------------|----------|

Family Benefits Act, R.S.O. 1980 c.151

| | | | | |
|-----------|-----------|--------|------------|----------|
| s.1(f)(i) | F0929-17R | Page 5 | Volume 1:1 | OCT 1991 |
| | H1121-16 | Page 5 | Volume 1:1 | OCT 1991 |
| s.7(1)(d) | F0929-17R | Page 5 | Volume 1:1 | OCT 1991 |
| | H1121-16 | Page 5 | Volume 1:1 | OCT 1991 |
| s.13(3) | H0710-11R | Page 6 | Volume 1:2 | JAN 1992 |
| s.13(5) | H0710-11R | Page 6 | Volume 1:2 | JAN 1992 |
| s.13(6) | H0321-05 | Page 7 | Volume 1:1 | OCT 1991 |
| | H1122-06 | Page 7 | Volume 1:1 | OCT 1991 |

Family Law Act, 1986

| | | | | |
|------|----------|---------|------------|----------|
| s.30 | J0216-15 | Page 17 | Volume 1:1 | OCT 1991 |
| s.31 | J0216-15 | Page 17 | Volume 1:1 | OCT 1991 |

French Language Services Act

| | | | |
|-----------|--------|------------|----------|
| H0710-11R | Page 6 | Volume 1:2 | JAN 1992 |
|-----------|--------|------------|----------|

SUMMARIES OF DECISIONS

CUMULATIVE INDEX

General Welfare Assistance Act, R.S.O. 1980, c.188

| | | | | |
|-----------|-----------|---------|------------|----------|
| s.1(2)(a) | J1017-06 | Page 22 | Volume 1:2 | JAN 1992 |
| s.7(1) | G0814-14 | Page 14 | Volume 1:1 | OCT 1991 |
| | G1208-21 | Page 13 | Volume 1:1 | OCT 1991 |
| | H0718-01 | Page 19 | Volume 1:1 | OCT 1991 |
| | J0311-02 | Page 15 | Volume 1:1 | OCT 1991 |
| s.7(2) | J0311-02 | Page 15 | Volume 1:1 | OCT 1991 |
| s.9 | H0612-15R | Page 26 | Volume 1:2 | JAN 1992 |
| s.11 | J0717-12 | Page 19 | Volume 1:2 | JAN 1992 |
| s.12 | G0829-04R | Page 29 | Volume 1:2 | JAN 1992 |

Interpretation Act, R.S.O. 1980, c.219

| | | | | |
|------|----------|---------|------------|----------|
| s.10 | J1017-06 | Page 22 | Volume 1:2 | JAN 1992 |
|------|----------|---------|------------|----------|

Labour Relations Act

| | | | | |
|-----------|-----------|---------|------------|----------|
| s.1(1)(o) | H0612-15R | Page 26 | Volume 1:2 | JAN 1992 |
|-----------|-----------|---------|------------|----------|

Ontario Regulation 318, R.R.O. 1980

| | | | | |
|----------------|-----------|---------|------------|----------|
| s.1(1)(a) | H1011-10 | Page 8 | Volume 1:1 | OCT 1991 |
| s.1(1)(aa) | J0520-14 | Page 10 | Volume 1:2 | JAN 1992 |
| | J0910-10 | Page 11 | Volume 1:2 | JAN 1992 |
| s.1(1)(d)(1a) | G0902-14 | Page 12 | Volume 1:1 | OCT 1991 |
| s.1(1)(d)(iii) | H0418-09 | Page 10 | Volume 1:1 | OCT 1991 |
| s.1(1)(d)(iv) | H0418-09 | Page 10 | Volume 1:1 | OCT 1991 |
| s.1(3)(c) | H0927-08 | Page 10 | Volume 1:1 | OCT 1991 |
| | H0601-02R | Page 12 | Volume 1:2 | JAN 1992 |
| s.2(10) | J0612-02 | Page 7 | Volume 1:2 | JAN 1992 |
| s.3(1) | J0910-10 | Page 11 | Volume 1:2 | JAN 1992 |
| | J0216-12 | Page 8 | Volume 1:2 | JAN 1992 |
| s.3(1)(b) | H1011-10 | Page 8 | Volume 1:1 | OCT 1991 |
| s.4(1) | J0910-10 | Page 11 | Volume 1:2 | JAN 1992 |
| s.5(b)1 | G0615-05R | Page 11 | Volume 1:1 | OCT 1991 |

CUMULATIVE INDEX

| | | | | |
|------------|-----------------------|------------------|--------------------------|----------------------|
| s.7(1) | G0609-18 H1011-10 | Page 8 Page 8 | Volume 1:1 Volume 1:1 | OCT 1991 OCT 1991 |
| s.8 | J0304-20 | Page 6 | Volume 1:1 | OCT 1991 |
| s.12(1) | J0617-01 | Page 14 | Volume 1:2 | JAN 1992 |
| s.12(8) | J0612-02 | Page 7 | Volume 1:2 | JAN 1992 |
| s.13(2)12a | J0216-12 | Page 8 | Volume 1:2 | JAN 1992 |
| s.13(2)13 | H1122-06 | Page 7 | Volume 1:1 | OCT 1991 |
| s.14(3) | G0212-06R G0901-07 | Page 9 Page 5 | Volume 1:1 Volume 1:2 | OCT 1991 JAN 1992 |
| s.14(6) | G0901-07 | Page 5 | Volume 1:2 | JAN 1992 |

Ontario Regulation 441, R.R.O. 1980

| | | | | |
|----------------|--|--|--|--|
| s.1(1)(p)(iii) | J0216-15 | Page 17 | Volume 1:1 | OCT 1991 |
| s.1(1)(p)(iv) | J0216-15 | Page 17 | Volume 1:1 | OCT 1991 |
| s.1(2) | G1208-21 H0622-02 H0718-01 J0807-03 | Page 13 Page 17 Page 18 Page 19 | Volume 1:1 Volume 1:1 Volume 1:1 Volume 1:1 | OCT 1991 OCT 1991 OCT 1991 OCT 1991 |
| s.1(2)(a) | H1024-05 H0608-10R H0612-15R | Page 16 Page 25 Page 26 | Volume 1:1 Volume 1:2 Volume 1:2 | OCT 1991 JAN 1992 JAN 1992 |
| s.1(2)(b) | H1108-02 H0608-10R | Page 13 Page 25 | Volume 1:1 Volume 1:2 | OCT 1991 JAN 1992 |
| s.3(1)(a) | E0514-03R | Page 19 | Volume 1:1 | OCT 1991 |
| s.3(1)(b) | H0622-02 J0807-03 H0608-10R | Page 17 Page 19 Page 25 | Volume 1:1 Volume 1:1 Volume 1:2 | OCT 1991 OCT 1991 JAN 1992 |
| s.3(1)(d) | H0608-10R | Page 25 | Volume 1:2 | JAN 1992 |
| s.3(3)(a) | J1014-10 | Page 28 | Volume 1:2 | JAN 1992 |
| s.6(1) | H0622-02 J0807-03 | Page 17 Page 19 | Volume 1:1 Volume 1:1 | OCT 1991 OCT 1991 |
| s.6(1)(a) | G1208-21 | Page 13 | Volume 1:1 | OCT 1991 |
| s.6(2) | J0807-03 | Page 19 | Volume 1:1 | OCT 1991 |
| s.6(4) | G1208-21 | Page 13 | Volume 1:1 | OCT 1991 |
| s.6(4)(b) | H1008-15 J0626-07 | Page 18 Page 19 | Volume 1:2 Volume 1:2 | JAN 1992 JAN 1992 |
| s.8 | H0612-15R | Page 26 | Volume 1:2 | JAN 1992 |
| s.8(9)(a) | E0514-03R | Page 19 | Volume 1:1 | OCT 1991 |

CUMULATIVE INDEX

| | | | | |
|-----------|----------|---------|------------|----------|
| s.11(1) | G1208-21 | Page 13 | Volume 1:1 | OCT 1991 |
| | J0807-03 | Page 19 | Volume 1:1 | OCT 1991 |
| | J1017-06 | Page 22 | Volume 1:2 | JAN 1992 |
| s.12 | H1024-05 | Page 16 | Volume 1:1 | OCT 1991 |
| s.13 | H1024-05 | Page 16 | Volume 1:1 | OCT 1991 |
| s.13(1) | J0619-04 | Page 24 | Volume 1:2 | JAN 1992 |
| s.13(2)12 | J0619-04 | Page 24 | Volume 1:2 | JAN 1992 |
| s.29 | H1024-05 | Page 16 | Volume 1:1 | OCT 1991 |

Ontario Regulation 943, R.R.O. 1980

| | | | | |
|-----------|----------|---------|------------|----------|
| s.1(2)(a) | H0723-04 | Page 21 | Volume 1:1 | OCT 1991 |
| s.6(a)(1) | G0814-22 | Page 21 | Volume 1:1 | OCT 1991 |
| s.6(a)(2) | G0814-22 | Page 21 | Volume 1:1 | OCT 1991 |
| s.7(a)(1) | H1119-09 | Page 22 | Volume 1:1 | OCT 1991 |

Residential Rent Regulation Act

| | | | | |
|-----|----------|---------|------------|----------|
| s.1 | J0617-01 | Page 14 | Volume 1:2 | JAN 1992 |
|-----|----------|---------|------------|----------|

Vocational Rehabilitation Services Act, R.S.O 1980, c.525

| | | | | |
|---------|----------|---------|------------|----------|
| s.1(b) | H0723-04 | Page 21 | Volume 1:1 | OCT 1991 |
| s.5(a) | J0530-07 | Page 31 | Volume 1:2 | JAN 1992 |
| s.5(h) | J0530-07 | Page 31 | Volume 1:2 | JAN 1992 |
| s.8 | H0723-04 | Page 21 | Volume 1:1 | OCT 1991 |
| | J0530-07 | Page 31 | Volume 1:2 | JAN 1992 |
| s.10(1) | H1119-09 | Page 22 | Volume 1:1 | OCT 1991 |

REFERENCES TO MANUALS

Family Benefits Policy and Procedural Guidelines Manual

| | | | | |
|-----------------|-----------|--------|------------|----------|
| Index #7, s.4.0 | F0929-17R | Page 5 | Volume 1:1 | OCT 1991 |
| | H1121-16 | Page 5 | Volume 1:1 | OCT 1991 |

CUMULATIVE INDEX

| | | | | |
|-----------|----------|---------|------------|----------|
| Index #11 | J0606-06 | Page 17 | Volume 1:2 | JAN 1992 |
| Index #12 | H1011-10 | Page 8 | Volume 1:1 | OCT 1991 |
| Index #19 | J0606-06 | Page 17 | Volume 1:1 | JAN 1992 |

Vocational Rehabilitation (Manual)

| | | | | |
|------------|----------|---------|------------|----------|
| VR-0503-13 | H0723-04 | Page 21 | Volume 1:1 | OCT 1991 |
|------------|----------|---------|------------|----------|

DEFINITIONS

| | | | | |
|---|-----------|---------|------------|----------|
| "available" | J0619-04 | Page 24 | Volume 1:2 | JAN 1992 |
| "conjugal" | H0418-09 | Page 5 | Volume 1:1 | OCT 1991 |
| "conjugal relationship" | J0216-15 | Page 17 | Volume 1:1 | OCT 1991 |
| "emergency assistance" | H0608-10R | Page 25 | Volume 1:2 | JAN 1992 |
| "entitled" | G0829-04R | Page 29 | Volume 1:2 | JAN 1992 |
| "head of a family" | J1017-06 | Page 22 | Volume 1:2 | JAN 1992 |
| "objective medical findings" | H0601-02R | Page 12 | Volume 1:2 | JAN 1992 |
| "otherwise eligible" | J0612-02 | Page 7 | Volume 1:2 | JAN 1992 |
| "payment" | J0216-12 | Page 8 | Volume 1:2 | JAN 1992 |
| "payments received by or on behalf of an applicant" | J0619-04 | Page 24 | Volume 1:2 | JAN 1992 |
| "regular employment" | H1024-05 | Page 16 | Volume 1:1 | OCT 1991 |
| | J1014-10 | Page 28 | Volume 1:2 | JAN 1992 |
| | J1017-06 | Page 22 | Volume 1:2 | JAN 1992 |

SUMMARIES OF DECISIONS

CUMULATIVE INDEX

| | | | | |
|--------------------------|-----------|---------|------------|----------|
| "rent" | J0617-01 | Page 14 | Volume 1:2 | JAN 1992 |
| "reside" | G0814-14 | Page 14 | Volume 1:1 | OCT 1991 |
| | J0311-02 | Page 15 | Volume 1:1 | OCT 1991 |
| "shared accommodation" | H0216-18 | Page 11 | Volume 1:1 | OCT 1991 |
| "trust" | J0520-14 | Page 10 | Volume 1:2 | JAN 1992 |
| "with a dependent child" | F0929-17R | Page 5 | Volume 1:1 | OCT 1991 |

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DECISIONS**

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This issue includes summaries of cases
heard during 1990 and 1991.

These summaries are provided for reference only.
Please consult the full text of the decisions for complete information.

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HOW TO USE THIS PUBLICATION

Summaries of Decisions is a collection of summaries of selected decisions of the Board. It is published four times per year and is distributed free of charge. Instructions for obtaining copies of the decisions summarized in each issue appear on the last page of this publication.

ORGANIZATION

This publication is divided into three parts. Part I contains summaries of decisions that relate to the Family Benefits Act. Part II contains summaries of decisions relating to the General Welfare Assistance Act, and Part III contains summaries of decisions relating to the Vocational Rehabilitation Services Act.

Each decision summarized in this publication is assigned a number of different index terms which reflect its content. The summaries appear under the one heading which best expresses the most noteworthy issue under discussion in each decision. This heading is in **BOLD** type at the beginning of each summary. These headings are arranged in alphabetical order within Part I, Part II, and Part III.

Other index terms which apply to a decision are listed separately to provide a further indicator of content.



Example:

CATEGORICAL ELIGIBILITY

**OTHER INDEX TERMS: JOINT CUSTODY; RECONSIDERATIONS;
SINGLE PARENT WITH DEPENDENT CHILDREN**



FILE NUMBERS

Each decision is identified by an alphanumeric File Number which appears on the summary in **BOLD** type. This number should be used to identify SARB decisions or to order copies. All decisions from Hearings on Reconsideration have the letter R added to the end.

HOW TO USE THIS PUBLICATION

Example:

File Number: F0927-16R

DATE OF HEARING

This date provides an indicator of the age of the decision.

THE SUMMARIES

Each summary is a brief statement of the most important facts of the decision and of the findings of the Board. It is not a guide to the arguments presented by the parties or to the Board's reasoning and analysis. For full insight into these matters readers must consult the full text of the decision. Instructions for obtaining copies of decisions appear on the last page of this publication.

The disposition of the case, the number of pages in the full text version of the decision, and the language in which the decision was written appear as the last sentence in the summary. Certain decisions have both an English and French language version available.

Example:

Appeal denied. (16 pp English; or 18 pp French)

REFERENCES

These references are to documents and authorities considered in and commented on in some detail by the Board in its findings. They are further indicators of the relevance of the decision. The list may include, in this order: federal and provincial statutes, regulations, cases, books, treatises and manuals. Terms whose meanings are discussed in a significant way appear in quotation marks at the end of the list.

Example:

General Welfare Assistance Act s.7(1); Re Richardson and the Commissioner of Metropolitan Toronto Department of Social Services (1988), 46 O.R. (2d) 63; "reside"

CUMULATIVE INDEX

A cumulative index to this publication is included with each issue. Use it to find summaries of decisions on specific subjects of interest to you.

References to summaries in the current issue are integrated with references from preceding issues in this list. Therefore, the most recent index can also be used to find decisions summarized in previous issues. KEEP YOUR BACK ISSUES FOR FUTURE REFERENCE. At the beginning of each year we will begin a new index.

The cumulative index is divided into the same three parts as the rest of the publication. Part I of the index refers to the Family Benefits Act. Part II refers to the General Welfare Assistance Act, and Part III to the Vocational Rehabilitation Services Act.

The index is arranged in alphabetical order by subject within each of the Parts. Each decision appears under several different index terms to provide a detailed guide to its content. Note that headings are of many different types. Factual, procedural, and conceptual terms are used and the names of statutes or programs may also appear as index terms.

Example:

| | |
|--|--------------|
| DRUG BENEFIT | (factual) |
| EXTENSION OF TIME | (procedural) |
| ONUS | (conceptual) |
| <u>CANADIAN CHARTER OF RIGHTS AND FREEDOMS</u> | (statute) |
| S.T.E.P. | (program) |

HOW TO USE THIS PUBLICATION

The left hand side of each index page shows the index terms and the File Numbers of all of the decisions which contain information on these subjects.

Example:

EXTENSION OF TIME
H0321-05

Information on the right hand side of each index page shows where the summaries of decisions on any given topic originally appeared in our publication. Details about page number, issue number, and issue date are provided.

PART I

DECISIONS UNDER THE
FAMILY BENEFITS ACT

HOMES, HOSPITALS, AND
INSTITUTIONS, PATIENT OR RESIDENT
IN

OTHER INDEX TERMS: MOTHER WITH
DEPENDENT CHILDREN;
RECONSIDERATIONS

File Number: H0208-10R

Date of Hearing: August 21, 1990

The Recipient received an allowance as the mother of a dependent child. The Director suspended her allowance on the grounds that her son was no longer a dependent child because he was living in facilities outside of the home, because of dispositions under the Young Offenders Act. The Recipient successfully appealed the suspension to the Board. The Director requested a reconsideration.

The preliminary issue was whether a reconsideration hearing should be held. The Board concluded that the Director had raised important issues of both fact and law relating to a need for clarification of the definition of "dependent child". A reconsideration hearing was therefore deemed appropriate.

The second issue before the Board was whether the Recipient was ineligible under O.Reg. 318 s.5(a)(i), because her son was a resident in a children's mental health centre. The Board concluded that this section disqualified only applicants or recipients who are themselves residents in such a facility.

If the Board was incorrect in this conclusion, another issue that was raised was whether the Recipient's son was a resident or patient in a children's mental health centre. The institution in question provides mental health services to children with "conduct disorder problems", some of whom have been referred as a result of young offenders proceedings. The term "children's mental health centre" is no longer used in the Child and Family Services Act, 1984, but "child and family intervention", which is the term in current use, is its equivalent. The facility in question offered two separate types of services, child and family intervention and young offenders. The Recipient's son was placed in the facility as a young offender by a probation officer and was required to remain there. He had no obligation to accept treatment nor was there evidence that he had done so. Because it was not clear that young offenders in the facility were residents or patients, the Board concluded that the ambiguity should be resolved in favour of the Recipient.

The final issue before the Board was whether the Recipient was a single mother with a dependent child. The Director suspended her allowance on the grounds that her son was no longer in her

FAMILY BENEFITS ACT

care. The Board concluded that there was no requirement in the legislation that a child be living with his mother in order to be considered a dependent child. Residence, however, is an important factor in determining whether a child is supported by his mother, and the issue therefore becomes whether the son was supported by his mother when he resided away from home and many of his expenses are paid by the facility where he lived. The Board found that the Recipient had never relinquished custody of her son and had remained involved in his care. She visited him and accepted some financial responsibility for his medical and dental care, clothing, and other expenses. However, the Recipient's son had been in care for ten months when the Director's decision was made and he still had at least twelve months to serve. The Board concluded that he was not a dependent child. **Original decision of the Board rescinded. Decision of the Director affirmed.** (45pp; English)

REFERENCES: O.Reg. 318 s.5(a)(i); Re Dennhardt and Director, Income Maintenance Branch, Ministry of Community and Social Services; Re Merrick and Director of Vocational Rehabilitation Services Branch of the Ministry of Community and Social Services (1985), 49 O.R. (2d) 675■

OVERPAYMENTS

OTHER INDEX TERMS: DISCRETION;
FUNERALS AND FUNERAL PLANS;
HOMES, HOSPITALS, AND

INSTITUTIONS, PATIENT OR RESIDENT
IN; LIQUID ASSETS

File Number: K0129-32

Date of Hearing: June 26, 1991

The Recipient was a single, disabled person who had been residing in a nursing home for three years. Her son was her trustee. An overpayment was assessed against the amount of the Recipient's entitlement for the period March 1989 to March 1991 because her liquid asset level exceeded the maximum permissible amount of \$3,300 at various times. The Recipient never actually had this amount in her bank account but she did have a prepaid funeral plan worth \$3,515.

In determining the amount of the Recipient's asset level, the Director took the highest bank account balance during this period which was \$2,976.39. To this the prepaid funeral value, less the \$1,900 exemption, was added, making a total of \$4,591.39. The allowable liquid assets were deducted, leaving an excess of \$1,291.39 which resulted in the overpayment.

The Board found that adding the highest bank account balance was a correct application of the legislation and that the overpayment was correctly calculated. However, the Board found that the Director had not fully considered the source of the overpayment.

The overpayment arose for two reasons: first, because the Family Benefits allowance would briefly pass through the

Recipient's bank account each month before the cheque to the nursing home was cashed, and secondly, because the Recipient's trustee erroneously believed that his mother required an account balance of at least \$1,685 in order to remain eligible for benefits. In reality, this was the maximum amount that she could have and still remain eligible. Had the amount in her account been decreased to several hundred dollars, the Family Benefits cheque could have passed in and out of the account without exceeding the allowable asset level. Moreover, the prepaid funeral plan constituted a significant portion of the Recipient's assets. The \$1,900 exemption is not legislated and may fluctuate.

The Board found that, given the nature of the asset and the policies governing it, the overpayment was not recoverable. **Appeal granted. Decision of the Director rescinded.** (9 pp; English)

REFERENCES: O.Reg. 318 s.1(1)(aa)(vii), s.16(3); Family Benefits Policy and Procedural Guidelines Manual, Index #12■

OVERPAYMENTS

OTHER INDEX TERMS: DEAF PERSONS; PAYMENTS RECEIVED

File Number: J0730-04

Date of Hearing: June 18, 1991

The Recipients received an allowance as a permanently unemployable couple

beginning April 1, 1990. A few months later, an overpayment was created because they received income from two sources: Canada Pension Plan and Unemployment Insurance benefits. The Canada Pension Plan payments were effective May 1, 1990 but the Recipients did not begin to receive them until June 1990. The Unemployment Insurance benefits were for the period April 1, 1990 to June 16, 1990 but did not begin arriving until May 1990. The CPP and Unemployment Insurance benefits were considered to be income and an overpayment was established.

The Recipients were diligent about informing Family Benefits staff about receiving these payments. This required special effort on their part since they required the assistance of an interpreter from the Canadian Hearing Society. In the Board's opinion, the Family Benefits staff also reacted as promptly as possible. The Board, however, is bound by section 17 of the Family Benefits Act which states that the Board may recover any sum paid to the recipient whether it be due to the fault of the recipient, "or for any other cause disentitling him to such an allowance".

The Board found that, in this case, although it was not due to any fault of the Recipients, they did receive funds to which they were not entitled and the Director did not delay in responding to this change in the Recipient's income. Therefore, the Director correctly exercised his discretion by deciding to recover the overpayment.

FAMILY BENEFITS ACT

The only discrepancy as to the amount of the overpayment is that the gross amount of Unemployment Insurance benefits was used in the calculation, rather than the net amount, which was the amount actually received. A plain reading of O.Reg. 318 s.13(1) and (2) indicates that it is the amount actually received by the Recipients that is to be deducted. In the Board's opinion, money from Unemployment Insurance benefits is basically analogous to earnings from wages and salary. The legislation specifically authorizes exclusion of tax deductions from the definition of income from employment, therefore there is no reason to treat substituted employment income from Unemployment Insurance benefits differently. Most important, there appears to be no authority in the legislation to take the gross figure. The Board further found that the recovery rate of \$58.50 was causing hardship and ordered it reduced to \$5.00 per month. **Appeal granted in part. Decision of the Director rescinded in part.** (17 pp; English)

REFERENCES: Family Benefits Act s.17; O.Reg. 318 s.13(1) and (2)■

PAYMENTS RECEIVED

OTHER INDEX TERMS: INSURANCE; ONTARIO MOTORIST PROTECTION PLAN

File Number: K0206-16

Date of Hearing: August 27, 1991

The Recipient was involved in a motor vehicle accident. She received insurance benefits, including no-fault benefits for twenty weeks. The Recipient declared these benefits. The Director determined that the no fault benefits must be treated as income and an overpayment was established. The issue before the Board was whether the no-fault benefits were income.

The Family Benefits legislation has not been amended to make clear how the new no-fault benefits should be treated under the Ontario Motorist Protection Plan. In the Board's opinion, O.Reg. 318 s.13(1) and (2) provide that the insurance benefits that the Recipient received were income unless they were damages or compensation for pain and suffering or for expenses arising from the accident. The Ontario Motorist Protection Plan does not describe them as such, nor do they serve either of these functions. Rather, the Recipient was entitled to receive them for the period that she suffered "substantial inability to perform the essential tasks in which ... she would normally engage."

In the Board's view no-fault benefits appear to be more akin to income replacement than to compensation. The Board concluded that no-fault benefits were income. **Appeal denied. Decision of the Director affirmed.** (12 pp; English)

REFERENCES: O.Reg. 318 s.13(1) and (2)■

**PERMANENTLY UNEMPLOYABLE
PERSON**

OTHER INDEX TERMS: MEDICAL
ADVISORY BOARD; MEDICAL
CONDITIONS

File Number: J0918-05

Date of Hearing: March 12, 1991

The Applicant's application for an allowance as a permanently unemployable or disabled person was initially denied by the Director. The Applicant appealed this decision and, at the Hearing, submitted new medical evidence in support of her original application. The new evidence referred to medical conditions that were not referred to in the Medical Advisory Board summary, namely depression and chronic personality disorder. Since these conditions have not been accepted by the Medical Advisory Board, the Social Assistance Review Board could not consider them.

In the Board's view, the refusal of benefits was made on the basis of those conditions accepted by the Medical Advisory Board at the time of application. Therefore the Director's decision could not be considered to be a rejection of the conditions that were not on the available medical evidence. Moreover, in the Board's view it was unreasonable to determine the Applicant's eligibility without reference to the new conditions.

In the Board's opinion, the Kowalski and Jankowski decisions taken together mean that the Board can review any evidence relating to a person's condition at the

date of the Director's decision with the exception of medical conditions that had not been accepted by the Medical Advisory Board. Medical conditions that have not been considered by that Board may be referred back, and if accepted, may result in a person being eligible as at the date of the Director's original decision. Referred back to the Director for reconsideration of whether the Applicant was a permanently unemployable person, taking into account all of the evidence. (8 pp; English)

REFERENCES: Director of Income Maintenance v. Jankowski (Court of Appeal, unreported, February 18, 1988); Kowalski v. the Ministry of Community and Social Services (unreported, Divisional Court, December 21, 1984)■

**PERMANENTLY UNEMPLOYABLE
PERSON**

OTHER INDEX TERMS: EVIDENCE

File Number: J0920-23

Date of Hearing: March 27, 1991

The Applicant was 34 years of age and suffered from secondary atrioventricular heart block and asthma. He had frequent dizzy spells, fainting, numbness, and chest pains and had been fitted with a pacemaker. He applied for an allowance as a permanently unemployable person. The Medical Advisory Board recommended to the Director that the Applicant be refused.

FAMILY BENEFITS ACT

When the Applicant's condition was first diagnosed, he was living in the United States. He began to collect "state disability". After several critical health episodes, the Applicant quit work and stopped seeing his doctor because he believed nothing could be done to improve his health. He returned to live with his parents because he could not support himself, and began to receive General Welfare as an unemployable person.

The Board found the Applicant to be a credible witness. It accepted the Applicant's verbal testimony that his heart condition was undeniably restricting, but in the Board's opinion the Applicant did not provide adequate medical documentary evidence to support his testimony. Instead of providing actual medical documents to the Board, the Applicant provided a decision from the Department of Health and Human Services (U.S.A.) in which he was granted a "period of disability and disability insurance benefits."

In the Board's view, the factors considered in the making of the decision of the Department of Health and Human Services and the decision of the Director of Family Benefits differed in two ways. First, the U.S. decision refers to certain other conditions of which the Medical Advisory Board had no evidence. These conditions could not be considered by the Board.

Secondly, both decisions considered the social factors of the Applicant's age, education and work experience. However,

the Board found that the Applicant's age of 34 years, his education, and his diverse work experience were assets which would help him to find employment, whereas the U.S. Administrative Law Judge found that "... any other jobs which the claimant can perform do not exist in sufficient numbers in the national economy. Consequently, it must be found that the claimant is disabled within the meaning of the Act."

The Board has no mandate to consider the availability of suitable employment. Because of the lack of documentary medical evidence the Applicant was not permanently unemployable. **Appeal denied. Decision of the Director affirmed.** (11 pp; English)

REFERENCES: nil■

SPOUSE

OTHER INDEX TERMS: CO-RESIDENCE

File Number: J0816-12

Date of Hearing: February 27, 1991

The Recipient had been receiving benefits as a single parent. A man moved in with her in 1987 as a co-resident, sharing expenses equally. In November 1990 he, his child, the Recipient, and her three children were still sharing accommodation. They did not declare that they were spouses nor was Mr. A. required to support her or any of her children.

During the period of co-residence, the situation in the home was chaotic and the children suffered behavioural problems. Mr. A. moved in and out of the Recipient's apartment several times. Once there was a fire in his own building and he and his child had to move back in with the Recipient. On another occasion, the person he was living with moved away and he had to return. He moved out a third time, which was supposed to be final. When the Recipient allowed him to move back in, it was as a friend. He had a child, was in debt, and had no other place to go. He made other attempts at moving but did not because he did not have enough money.

The issue before the Board was whether the Recipient's co-resident was a spouse who had resided continuously with her for a period of not less than three years.

The Director's opinion was that the separations did not constitute a break in the continuous residence and that the relationship was not negated. In the Board's opinion, moving back in with the Recipient is not the only factor which determines continuous residency. Intent of the parties must also be considered.

The Board found that both parties thought that their problems would be resolved by living apart and that both parties had attempted to live apart. In the Board's opinion, this constituted a break in the continuous residing. **Appeal granted. Decision of the Director rescinded.** (9 pp; English)

REFERENCES: O.Reg. 318 s.1(1)(d);

Willis v. Ministry of Community and Social Services (1983), 40 O.R. (2d) 287■

TRUSTS

OTHER INDEX TERMS: JURISDICTIONAL ISSUES; LIEUTENANT GOVERNOR IN COUNCIL; LIQUID ASSETS

File Number: J0702-08

Date of Hearing: February 26, 1991

The Applicant was a mentally-handicapped woman aged 48. She had received an allowance dating from 1960. At that time she was living with her mother. After her mother died, the Director suspended and then, in July 1986, cancelled the Applicant's benefits, on the grounds that she had liquid assets in excess of the allowable amount. The Director took the position that moneys held in trust under the terms of the will of the Applicant's mother were liquid assets of the Applicant. The Applicant's brother was the trustee of the trust fund under the will. At the time of the Director's 1986 decision, the Applicant had received no money from the estate.

The Applicant, through her legal representative, appealed this earlier decision to the Board, who affirmed the Director's decision. The Applicant did not request a reconsideration nor did she appeal this decision to the Divisional Court.

The Applicant received no money from

FAMILY BENEFITS ACT

Family Benefits after 1986. After her mother's death she lived in a group home. She could not pay, but the operators of the home allowed her to remain because she was destitute but she incurred a debt to the operators of the home.

In 1987, the Public Trustee became the trustee of the estate of the Applicant's mother. The operators of the group home requested that the Public Trustee pay the Applicant's debt and also to pay her a monthly amount for living costs. The Public Trustee refused, stating that payment out of the capital was at the discretion of the trustee. The Public Trustee took the position that he was bound by the terms of the will and the Henson decision which said that the trustee of a discretionary trust is under no obligation to pay the obligations of the beneficiary and that the social agencies cannot discontinue support.

At the end of 1988 the Public Trustee agreed to provide the Applicant with approximately \$600 per month for living expenses, on a "without prejudice" basis. The Applicant, however, continued to live in dire circumstances.

The evidence suggested that the Applicant and her representatives were led to believe that her benefits would be reinstated if the Court of Appeal denied the Ministry's appeal in Re Henson. After the Court of Appeal did deny the appeal in September 1989, the Applicant's benefits were not reinstated. The Applicant's representatives requested the Director to take an application on a number of occasions after the release of

the Court of Appeal decision but the Director refused.

The preliminary issue was whether the Board could hear the appeal, or whether the matter had been previously decided. The Board noted that the appeal before it was from a different decision of the Director than that which had come before the Board in 1987, nor had the Applicant previously appealed the most recent decision of the Director. She therefore had the right to appeal. Moreover, because of clarification in the law as a result of Re Henson and other cases, the Board had a duty to look at the latest decision.

The second issue before the Board was whether the funds held in trust under the terms of the will were liquid assets of the Applicant, whether she had a beneficial interest in the assets held in trust, and whether they were available to be used for maintenance. A reading of the terms of the will disclosed that the use of the capital was within the discretion of the Trustee and was therefore not available to the Applicant for maintenance. The Board, however, noted that the income from the trust fund was available to the Applicant. The income was a liquid asset but the capital was not. The evidence was that the original principal amount generated about \$130 in income each month. Therefore, when the Director refused the Applicant's application in 1990, the Applicant was in fact eligible because her liquid assets were less than \$3,000.

The third question before the Board was the effective date for reinstatement of the

allowance. The Applicant's legal representative requested that benefits be reinstated from the date in 1986 on which the Applicant's allowance was cancelled. The Board found that it had no jurisdiction to grant this request because it was the 1990 decision of the Director that was under appeal, not the earlier decision. The legislation allows benefits to begin up to four months earlier if the delay was outside the Applicant's control. Therefore, the Board exercised its discretion to order benefits to commence from May 1, 1990. Furthermore, the Board ordered that when calculating the arrears payable for the period from May 1, 1990 to the present, the only money received from the Public Trustee to be considered income and deducted from the Applicant's budgetary requirements was the part of the trust fund that was a liquid asset.

In the Board's view, the special circumstances present in this case make it appropriate for the Minister to consider recommending to the Lieutenant Governor in Council that benefits be provided to the Applicant for the period from the date when the Applicant stopped receiving benefits until the date of her new application in August 1990. **Appeal granted. Decision of the Director rescinded.** (29 pp; English)

REFERENCES: O.Reg. 318 s.1(1)(aa), s.3(2)(a), s.14(3); Director of Income Maintenance (Ont.) v. Hensen (1987), 26 O.A.C. 332 (Ont. Div. Ct.)■

TRUSTS

OTHER INDEX TERMS: EXTENSION OF TIME

File Number: J0827-28

Date of Hearing: April 23, 1991

The Recipient had been receiving an allowance as a disabled sole-support parent with two dependent children since 1973. The Director decided that the Recipient was ineligible for an allowance because she had liquid assets in excess of the permissible amount, namely, a trust fund established by her father's will.

The preliminary issue before the Board was whether an extension of time for requesting a hearing should be granted. When the Recipient received notice of the Director's decision she promptly sought advice from a legal clinic. The clinic advised the Recipient that she was ineligible for Family Benefits and to obtain an allowance from the trustee of the estate. The trustee initially consented to provide an allowance, however, the estate lawyer advised against it, and directed the Recipient to apply for legal aid to appeal the Director's decision. She was eventually granted a Legal Aid Certificate and made her appeal.

The Board found that the time for filing a Notice of Request for Hearing should be extended for the following reasons. The appeal raised a significant legal issue; furthermore, the Director did not suggest that the delay prejudiced his case. The Board also found that the Recipient had a continuing intention to challenge the

GENERAL WELFARE ASSISTANCE ACT

Director's decision from the time that she was notified of it.

The substantive issue was whether the Recipient had liquid assets in excess of the maximum allowable amount. After careful analysis of the applicable case law, the Board found that the trustee could not be compelled to use the capital funds for the care and maintenance of the Recipient beyond the income generated by the trust fund, and the capital was not available to the Recipient because of the discretionary power of the trustee. The wording "and such part or parts of the capital thereof as my Trustee may consider advisable from time to time" found in the will gives the trustee the absolute and uncontrolled discretion to encroach upon the capital. She declined to do so.

Moreover, in this case the Recipient was not the sole beneficiary and the trustee had a legal duty to act in the best interest of all of the beneficiaries. If the trustee failed in her duty the beneficiaries could sue her. Had the testator wished the Recipient to be the sole beneficiary he could have easily provided for it.

Finally, in the Board's opinion, it would be unlikely that the courts would interfere in this case because the trust was a private one and there had been no suggestion of bad faith on the part of the trustee. The Board found that The Recipient had made reasonable efforts to realize financial support from the trustee. **Appeal granted. Decision of the Director rescinded.** (12 pp; English)

REFERENCES: O.Reg. 318 1(1)(aa), s.8; Director of Income Maintenance Branch of the Ministry of Community and Social Services v. Henson (1987), 26 O.A.C. 332; Director of Income Maintenance Branch of the Ministry of Community and Social Services and Powell (unreported decision, December 22, 1989); Gisborne v. Gisborne H.L. (1877), 2 App. Cas. 300; Re Bell [1923] O.W.N. 698; Re Blow (1977), 18 O.R. (2d) 516 (H.C.J.); Re the Director of Income Maintenance Branch of the Ministry of Community and Social Services and McMillen (unreported, Divisional Court, February 27, 1990)■

DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

AGE

OTHER INDEX TERMS: APPLICATIONS;
SPECIAL CIRCUMSTANCES

File Number: J1206-13

Date of Hearing: April 26, 1991

The Applicant was 17 years old when she moved out of her mother's home and began to live with her boyfriend. She later left school and began to work part-time. The Applicant's boyfriend was not working and the Applicant paid for all the rent and expenses.

The Applicant's boyfriend applied for assistance. He advised his worker that he and the Applicant shared the rent. He was granted assistance which was calculated on the basis that the rent was shared and that the Applicant was living with him as a co-resident. After he began receiving assistance, he gave the Applicant some money from each of his cheques for rent. The Applicant continued to pay the rent, hydro, phone and to purchase the food.

When her hours of work were reduced, the Applicant applied for assistance because she did not earn enough to meet her expenses. She completed a Form 1A and was advised immediately that she was not eligible for assistance. The Applicant understood that the reason for the refusal was that she was not yet 18 years old.

The Applicant's legal representative submitted that the application had not been fully considered because the Administrator had a blanket policy of refusing assistance to people under 18 years of age and not in school. The spokesperson for the Administrator argued that they do grant assistance if there are "special circumstances", but that the Applicant did not provide any such evidence.

The Board was concerned about the use of Form 1A. After this form is completed, a home visit is usually scheduled and Form 1 is completed during this visit. In the Board's view, it was clear from the Applicant's experience that a home visit would be scheduled only when the worker made an initial determination that

an applicant might be eligible. This poses a danger that applicants will be rejected based on less than complete information. The Board concluded that the Applicant's eligibility had never been fully evaluated and that the Administrator has an obligation to actively determine whether special circumstances exist. **Referred back.** (12 pp; English)

REFERENCES: nil ■

CASUAL GIFTS

OTHER INDEX TERMS: DISCRETION;
INCOME; PAYMENTS RECEIVED

File Number: K0208-02

Date of Hearing: June 26, 1991

The Recipient was a sole-support parent with two dependent children. She had been out of work for one and a half years because she had to look after her daughter who had a brain tumour removed and suffered lingering complications. The daughter was being assessed and awaiting placement in a mental health facility. The Recipient's plan was to sell her house after her daughter was placed, and then return to work part time.

The Recipient testified that she had begun to rent out her basement apartment. Nevertheless, her mortgage rate was very high and her monthly expenses exceeded her income every month. Her worker advised her to put her house up for sale. She did not do it immediately because her

GENERAL WELFARE ASSISTANCE ACT

real estate agent advised her that the housing market was in a slump, and she was preoccupied with looking after her daughter.

From time to time the Recipient's father sent her gifts of money to help her. She called her worker as soon as she rented out her basement apartment but she did not think she needed to tell her worker about the gifts she had received from her father. The Administrator terminated her assistance on the grounds that the contributions made by the Recipient's father exceeded her entitlement.

The total amount of the gifts received was \$3,700 U.S. In the Board's opinion, these could not be considered gifts of small value. The Board agreed with the Administrator that the casual gifts received by the Recipient must be considered income. However, the Board also found that there were special circumstances in this case. The Recipient was in a very difficult financial situation that was beyond her control. She had no choice but to accept financial help from her father. The Board concluded that the Administrator's decision to cancel her assistance was an unreasonable exercise of discretionary power. **Appeal granted. Decision of the Administrator rescinded.** (8 pp; English)

REFERENCES: General Welfare Assistance Act, s.10(2)(c); O.Reg. 441 s.13(1)(a)■

CASUAL GIFTS

OTHER INDEX TERMS: INCOME; PAYMENTS RECEIVED

File Number: K0604-16

Date of Hearing: December 17, 1991

After the Recipient began receiving assistance, the Administrator's office was advised that the Recipient's children were assisting with the purchase of groceries and other expenses. The Administrator calculated the amount of groceries and gifts at \$210 monthly and included it as income. The allowance was cancelled on the basis that the family income exceeded entitlement. The Administrator later found that the allowance had been cancelled in error and that the Recipient was entitled to assistance of \$18.98 per month. The question before the Board was whether the gifts from the children should be included as income.

The children did not actually give cash to their parents to buy groceries. Instead, they brought food and small gifts for birthdays and other occasions. Nevertheless, in the Board's opinion, the definition of income is so broad that it includes payments in kind to a recipient, and may also include a transfer of money or a gift.

The Board found that the gifts of cash for birthday and Christmas presents, which averaged \$10 per month, were "casual gifts of small value" and should not be considered income. The Board also found that the groceries were casual gifts but could not be considered of "small value",

and concluded that one half of the gift of groceries was a gift of small value. The Board noted that the Administrator does not include as income the value of groceries obtained by recipients at food banks, even if the food banks are used on a regular basis. In this case, the children's attempt to assist their aged parents to obtain healthy foods should be similarly treated. **Appeal granted in part. Decision of the Administrator rescinded in part.** (6 pp; English)

REFERENCES: O.Reg. 441 s.13(2)21; "payment"■

DEPENDENT CHILD

OTHER INDEX TERMS: FOSTER PARENTS AND CHILDREN

File Number: J1127-27

Date of Hearing: May 23, 1991

The Recipient, a grandmother, gained custody of her natural granddaughter for three months under a supervision order. Earlier, the Recipient's daughter had received benefits for herself and the baby. The Recipient testified that the daughter neglected her baby and that the money was not spent to support the infant. The Recipient began to take care of the baby and could not return to work. The Recipient herself then began to receive benefits for her daughter as a dependant, and for her granddaughter as a foster child. The daughter moved out, leaving the baby with the grandmother.

When the supervision order was terminated, the Recipient applied for custody of the child, supported by the Children's Aid Society. She was then granted welfare benefits as a sole-support parent with a dependent child. The issue before the Board was whether the child should have been considered a dependent child, rather than a foster child, from the beginning and whether the dependent child benefits were payable from such time.

In the Board's opinion, there is little in the legislation to distinguish between a foster child and a dependent child. The Administrator's representative testified that their decisions in these matters are not based on financial advantage but on the intent of the arrangement, particularly whether people intend to treat the children as their own, on a long-term basis, or whether the arrangement will be short-term. The core of the dispute in this case was a difference in the understandings of the Recipient and her worker about this matter. The worker understood the arrangement to be short-term, as the order was for three months. The Recipient agreed that these were the terms of the placement but stated that there was little expectation that her daughter's parenting skills would improve.

On the facts of the case, the Board found that the baby fell within the definition of a dependent child. The Recipient had taken care of her since one month following her birth and had complete care of her from the time the daughter left home. The Board found that there were reasons why the Administrator had at first

GENERAL WELFARE ASSISTANCE ACT

found the child to be a foster child, but when the care arrangement became permanent and the baby became a dependent child, the Administrator's decision should have been made retroactive. **Appeal granted in part. Decision of the Administrator rescinded in part.** (15 pp; English)

REFERENCES: Child and Family Services Act s.14 (i) and (ii); "foster child" ■

JOB SEARCH

OTHER INDEX TERMS: EMPLOYABLE PERSON; UNEMPLOYMENT DUE TO CIRCUMSTANCES NOT WITHIN CONTROL

File Number: J0920-06

Date of Hearing: April 10, 1991

The Applicant applied for assistance as an employable person on two occasions and was refused. On the first occasion, the Applicant was refused on the grounds that he had quit his job and his unemployment was therefore within his own control. The Administrator said that the Applicant had signed an agreement with his employer stating that being absent without notifying the employer was deemed to be a resignation. The Applicant later missed work for three days without notification.

The Applicant stated that he was sick for those three days and that his telephone did not work. He did not in any way notify his employer. At the Hearing he stated that he knew about the agreement

and remembered signing it, but he had been absent before with no penalty and therefore did not expect to be fired.

The Applicant did not produce any evidence of his illness and did not consult a doctor. He stated that a neighbour telephoned to report his line out of commission. The Administrator took the position that if the Applicant were able to get a neighbour to make this call, the neighbour could also have telephoned his employer.

The Board found that the loss of the job was within the Applicant's control.

Another issue before the Board was whether the Applicant was making reasonable efforts to seek employment at the time of the second decision. The Applicant testified that he had not received a job search form and therefore keep his own list. He was not told how many employers he was to see in a day but believed that the number was three. He did not get their signatures. The Administrator argued that the Applicant had received assistance previously and was aware of the requirement for making four calls per day and for obtaining signatures. The Applicant's legal representative submitted that the Applicant lived in an area where there were few jobs available and that, because of this, his job search was reasonable.

The Board found that the Applicant had not been recently informed of job search requirements or provided with the proper form. He might honestly have believed the required number of contacts to be

three. Is this reasonable? Should times when there are fewer jobs available mean that less effort is required or more effort is required to make these searches? Must all contacts be in person or is it reasonable to phone first and ask if employers are hiring?

In the Board's opinion, various municipal job search requirements are based on policies which are not binding on the Board. Completed job search forms, for example, are a useful tool to determine whether a person is conducting a reasonable job search, but they should not be the sole evidence relied on nor should they be rigidly adhered to in the face of changing local economic circumstances. In this case, the Administrator applied arbitrary standards of reasonableness in this and other matters. The Board does not believe that failure to obtain employment means that the Applicant was not seeking employment in times of few possible jobs. The Board found that this Applicant's job search was reasonable. **First appeal denied. Decision of the Administrator affirmed. Second appeal granted. Decision of the Administrator rescinded.** (20 pp; English)

REFERENCES: Champagne v. Administrator, Department of Social Services for the County of Simcoe (unreported, Divisional Court, April 24, 1986) "reasonable"■

JOB SEARCH

OTHER INDEX TERMS: EMPLOYABLE PERSON

File Number: J1112-12

Date of Hearing: January 24, 1991

The Applicant lost his job and received Unemployment Insurance benefits. As a result of that time of financial difficulty, he lost his truck and furniture. He looked for work at the only two prospective employers in the town and then applied for assistance. He was asked to complete a job search report covering the two week period prior to his application. The Applicant reported his contact with the two prospective employers. He was given assistance for two weeks but was refused further assistance because the Administrator considered that his job search efforts were not sufficiently serious.

The issue was whether the Applicant had made reasonable efforts to secure employment at the time of his application. In the Board's view, the wording of the applicable legislation affords wide discretion regarding what can be considered a reasonable search for employment. The test is largely a subjective one, as is confirmed by the provincial General Welfare Policy Guidelines, GW-0303-03.

In the Board's opinion, the Applicant's lack of transportation is a factor in determining whether reasonable effort had been made. With no vehicle or money to pay people to drive him places, he was

GENERAL WELFARE ASSISTANCE ACT

unable to apply further afield. In addition, long distance charges would apply in a job search by telephone, and the Applicant did not have a telephone or money to pay long distance. The closest Canada Employment Centre was a four hour walk away.

The Board was satisfied that the Applicant's lack of financial resources was a significant barrier to a search for work, and that his job search efforts were reasonable. **Appeal granted. Decision of the Administrator rescinded.** (6 pp English; 7 pp French)

REFERENCES: O.Reg. 441 s.3(1)(b)(ii); General Welfare Policy Guidelines, GW-0303-03■

LIQUID ASSETS

OTHER INDEX TERMS: NATIVE PEOPLE

File Number: J0528-13

Date of Hearing: February 26, 1991

The Recipient, a widow, was receiving assistance for herself and four children. She left her reserve in Quebec in order to take a 24-week computer course and, subsequently to seek employment. She later applied for assistance because she had not yet been successful in her search for a job. She had a vacant house on reserve land in the province of Quebec that had a market value between \$20,000 and \$30,000. The house was liveable and vacant and the Recipient had the right to

sell the house and to realize proceeds from the sale.

The Recipient was not willing to sell the house because she felt that her roots were on the reserve and that losing the house would be comparable to giving up her rights as a Native. Although she resided in an Ontario city because of the economic opportunities there, she did not rule out the possibility of a move back to the reserve in the future. If she sold her house and wanted to return to the reserve, her name would go to the bottom of the housing request list. In the Board's view, welfare legislation is not geared to Native traditions or way of life and the Board must interpret the legislation taking into account this uniqueness. The Board therefore found that the requirement that she sell her house was unreasonable.

The second issue before the Board was whether the house on the reserve was a liquid asset. There were many restrictions on any potential sale. The coordinator of the Housing Task Force for the Assembly of First Nations testified that the Indian Act requires that the house can only be sold to another member of the Recipient's band and that any sale must be approved by the Minister of Indian Affairs and by the band. Moreover, economic factors play an important part. Since unemployment is high on reserves, few people have the resources to buy a house. Moreover, mortgages can not be obtained because the Indian Act stipulates that reserve lands are not subject to seizure under legal process. These restrictions

indicated that her house could not be readily converted into cash. **Appeal granted. Decision of the Administrator rescinded.** (15 pp; English)

REFERENCES: Indian Act; O.Reg. 441 s.1(1)(k), s.3(3)(b)■

LIQUID ASSETS

File Number: J0610-19
Date of Hearing: June 25, 1991

The Recipient had owned a share in an investment group for many years. The group had invested in a golf course. The Recipient separated from her husband in 1987. Because of ill health, she was unable to work and began receiving General Welfare Assistance in 1988. The Administrator received information that the Recipient owned this share and discovered that it would realize \$25,000 if it were sold back to the group at the time in question, and that there was some possibility of it realizing substantially more on November 30, 1990. The Recipient's assistance was terminated effective September 30, 1990.

The issue before the Board was whether the Recipient's share in the group was an available liquid asset. The Recipient's legal representative submitted that the share was not an available liquid asset because the Recipient's debts virtually cancelled out the monies she would receive on the sale of the share. The Board did not accept this argument, and found that the legislation is not intended

to enable recipients to use assets to place themselves in a debt-free position while continuing to receive assistance. **Appeal denied. Decision of the Administrator affirmed.** (7 pp; English)

REFERENCES: O.Reg. 441 s.1(1)(k)■

PAYMENTS RECEIVED

OTHER INDEX TERMS: GARNISHMENT; INCOME; SUPPORT OR MAINTENANCE PAYMENTS; UNEMPLOYMENT INSURANCE

File Number: J1205-21
Date of Hearing: June 14, 1991

The Applicant applied for assistance as an unemployed but employable person. Prior to his application for assistance he was receiving Unemployment Insurance benefits but these benefits were garnished at 100 percent to recover support arrears. The Applicant had retained a lawyer to help him contest the garnishment.

After the garnishment began, he applied for general welfare. The Administrator treated the Applicant's gross Unemployment Insurance as income even though he did not actually receive it and found him ineligible because his income exceeded his budgetary requirements. The Applicant submitted that he was in financial need because of the garnishment. Without welfare assistance, his income would be far below the amount established in the legislation for a person in the Applicant's situation.

GENERAL WELFARE ASSISTANCE ACT

Alternatively, if the entitlement to General Welfare were based only on the Unemployment Insurance benefits actually received, General Welfare would, in effect, be paying part of his garnishment.

The Applicant was entitled to Unemployment Insurance benefits but did not actually receive them, therefore the issue became whether the payments had been received on behalf of the Applicant. In the Board's view, the plain meaning of the words "payments received ... on behalf of an applicant" implies that the person who is receiving the benefits does so for the benefit of the Applicant. It is not obvious that this applies to funds which the Applicant does not receive because of garnishment. Using the normal meaning of the words, it was the Board's opinion that the Applicant's spouse was receiving the unemployment benefits instead of the Applicant. It is difficult to conclude that the Applicant's spouse was receiving the benefits on behalf of the Applicant.

The Applicant was unable to obtain regular employment and was therefore a person in need if his budgetary requirements exceeded his income. In the Board's opinion, the definition of income in the legislation creates some penalties under certain specific circumstances, but it does not clearly create a penalty for those who must rely on Unemployment Insurance benefits and have had these benefits garnisheed. The Board concluded that, in the absence of a clearly legislated penalty, it should not accept an interpretation of "income" which disentitles people in actual financial need.

Appeal granted. Decision of the Administrator rescinded. (10 pp; English)

REFERENCES: O.Reg. 441 s.13(2)12; Re Baxter and Social Assistance Review Board (unreported, Supreme Court of Ontario, December 8, 1988); Re Millar (1976), 71 D.L.R. (3d) 120; Zajac v. Zwarycz (1965), 49 D.L.R. (2d) 52 (Ont. C.A.); "on behalf of" ■

PAYMENTS RECEIVED

OTHER INDEX TERMS: GARNISHMENT; INCOME; SUPPORT OR MAINTENANCE PAYMENTS; UNEMPLOYMENT INSURANCE

File Number: J1227-12

Date of Hearing: July 17, 1991

One month after the Applicant began to receive Unemployment Insurance benefits they were garnisheed at a rate of 50 percent in order to satisfy outstanding child support arrears. For two successive months he received emergency assistance. The following month he applied for ongoing assistance. The Administrator treated the Applicant's entitlement to Unemployment Insurance as income and concluded that the Applicant was not eligible. The first issue before the Board was whether the Applicant's gross Unemployment Insurance benefits before tax should be treated as income.

The legislation is silent on the question of whether the "gross" or "net" payment is to

be used. The Board is of the view that the net amount is reasonable. Other sections of O.Reg. 441 support this position. In s.13(2)(1)(i) the net amount is used for calculating chargeable income from earnings. Unemployment Insurance is actually a form of earnings replacement and should not be treated differently from payments received under the Unemployment Insurance Act. Further, applicants in this situation are penalized twice for the same tax payment, once by having it deducted by Unemployment Insurance and once again by the Administrator not recognizing the first deduction.

The second and more complex issue before the Board was to determine the effect of the partial garnishment on determining eligibility. In the Board's opinion, the garnisheed benefits were not received by the Applicant, therefore the question was whether the full net benefits were received "on behalf of" the Applicant.

Counsel for the Applicant argued that "income" should include any money received by or on behalf of the Applicant and that "on behalf of" should be interpreted as meaning "for the benefit of". Therefore, the Applicant's income should include only the money actually received as Unemployment Insurance benefits, because he neither received nor derived a benefit from the garnished money.

The Board, however, was of the view that the Applicant did derive a form of benefit from the garnishment order. Because his

obligation or debt was being paid, although involuntarily, the Applicant's obligation to support his children was being distinguished and this process was, nonetheless, beneficial to him. While he did not directly receive the full amount of Unemployment Insurance payments, a portion of these payments was received by the Support and Custody Enforcement office on his behalf for his outstanding child support arrears. The Board noted that this form of garnishment is not exempt under the legislation.

The Board recognized that the Applicant may disagree with the garnishment, however, it involved matters that were subject to an order of a court of competent jurisdiction and it is there that a possible remedy lies.

The Board therefore concluded that the payments which were garnisheed to meet the Applicant's child support obligation must be considered as income. The Applicant was ineligible because his chargeable income exceeded his entitlement. **Appeal denied. Decision of the Administrator affirmed.** (14 pp; English)

REFERENCES: O.Reg. 441 s. 13(1), s.13(2)(12); Owners, Istorata Plan No. VR368 v. Marathon Realty Co. Ltd. et al (1982), 141 D.L.R. (3d) 540 (BCCA); Re Baxter and Social Assistance Review Board (unreported, Supreme Court of Ontario, December 8, 1988); Re Millar (1976), 71 D.L.R. (3d) 120; "on behalf of"■

GENERAL WELFARE ASSISTANCE ACT

PAYMENTS RECEIVED

OTHER INDEX TERMS: DRUG BENEFITS;
INCOME; SHELTER

File Number: K0130-03

Date of Hearing: June 19, 1991

The Applicant was 55 years old, separated, and with no dependent children. She had resided in Canada for seventeen years. Her three sons and one grandchild lived in her home with her. The Applicant and her husband were not legally separated and she testified that she would not seek a legal separation or support from him because she was too ashamed.

The house was jointly owned by the Applicant and her spouse. Although her husband did not live with the family he contributed to the expenses of the home from time to time when his health enabled him to work. He did not remit the money to the Applicant but made all transactions with his sons. Each of the sons paid a monthly amount to the father for the maintenance of the house and the father paid the remaining shelter costs. The monthly utilities were also paid in shares.

Because of the recession the sons and their father had less work and could not contribute as much money to the household. The Applicant did not have enough money to buy her medication. In the past she had worked occasionally doing housework but was unable to continue because of her health. The Applicant applied for assistance and was

refused on the grounds that her income was greater than her budgetary needs.

The Administrator submitted that the Applicant's shelter costs were \$2,547 and were entirely paid by her sons. In reviewing the evidence, the Board found that the shelter costs were actually less than half of this amount. The Board found that because the Applicant's husband owned half of the house it was reasonable to consider that half of the house costs belonged to him. Paying them preserved his interest in the house. In the Board's view, it was reasonable to treat the money paid by her husband as support rather than rent because he was a part owner of the house. Therefore, the Applicant's half-share of what her husband paid should be deducted from her budgetary needs.

The Applicant's sons testified that they paid for their own food. The Board found that it was therefore reasonable to treat their financial contribution as rent rather than as support. According to the legislation only 60 percent can be treated as chargeable income, so a further amount was deducted against the Applicant's budgetary needs.

The Applicant therefore received payments for support from her husband and chargeable rent from her three sons. Although she did not receive the money directly, she still benefited from it as though she had personally received the money and then used it to pay her share of the expenses. The Board found that it was considered to be income. The Board found that the Applicant's income was in

excess of her budgetary requirements and she was therefore ineligible for assistance.

The Board did not receive evidence of the Applicant's monthly medical expenses but noted that she was distressed over her inability to purchase medication. The Board pointed out that the Applicant might qualify for drug benefits. This issue was sent back to the Administrator with the instruction that should her budgetary requirements plus her prescription drug costs total more than her monthly income, the Applicant would be entitled to the minimal amount of general assistance and to drug benefits. **Referred back.** (9 pp; English)

REFERENCES: O.Reg. 441 s.11(2a), s.13(1), s.13(2)11c■

SPOUSE

OTHER INDEX TERMS: CONCURRING OPINIONS; HEAD OF A FAMILY

File Number: J0214-23

Date of Hearing: July 18, 1990

The Applicant was living with her spouse and child in the U.S.A. where they were supported by the Applicant's sister-in-law while her spouse was at university. The Applicant became pregnant and, because of the cost of giving birth in the U.S.A., and because the sister-in-law could no longer afford to support the whole family, the Applicant came to Ontario in order to give birth and to reside with her own sister. The Applicant was eligible to be covered by the Ontario Health Insurance

Plan. After two months and the birth of the child, the Applicant's sister found it to be too expensive. The Applicant offered to repay her sister should welfare be granted.

The Administrator determined that the Applicant was not the "head of a family whose spouse was absent" because she was not deserted by him and because she was separated from him by choice.

In the Board's view, the term "absent" must not be limited to its plain meaning but must be considered in the context of the legislation. The legislation implies that the circumstances of being a "person in need" are involuntary, therefore, the reason for the spouse's absence is relevant. The Board agreed with the Administrator that the Applicant and her spouse were absent from each other because of mutual choice and that the Applicant was not involuntarily in the position of being a head of a household whose spouse was absent. **Appeal denied. Decision of the Administrator affirmed.** (31 pp; English)

REFERENCES: O. Reg. 441 s.1(1)(i), s.1(2)(b); 31 C.E.D. (Ont. 3) paras 53, 55, 60; "absent"■

STUDENTS

OTHER INDEX TERMS: JURISDICTIONAL ISSUES

File Number: J0106-11

Date of Hearing: January 15, 1991

GENERAL WELFARE ASSISTANCE ACT

The Recipient was an employable person who applied to the local welfare committee for assistance to attend a secondary school on a full-time basis. The committee approved her request but two months later they suspended the assistance because they maintained that the Recipient had not provided a job search list as had been requested. The issue to be determined by the Board was whether the Recipient was required to search for employment while she was, with the approval of the committee, in attendance at school.

In the Board's view, the only power given the Administrator under s.6(1)(a) of O.Reg. 441 is the power to decide whether to approve the applicant or recipient receiving assistance while in attendance in a school approved by the administrator.

In reviewing the evidence, the Board found that the criteria under this section had been met. The Board had grave doubts about whether the Administrator had the authority to make the approval for school attendance conditional on meeting requirements that were not related to the school, the course, or the student's performance. However, if the power given the Administrator were broad enough to encompass the making of such conditions, in the Board's opinion the only latitude available to the Administrator would be to set conditions that are reasonable, given individual circumstances. In light of the Recipient's circumstances the Board found that the additional requirements set out by the committee were unreasonable. The Board

also found that it was unacceptable for the committee to have arbitrarily terminated the assistance in the middle of a school term when the Recipient was showing satisfactory progress.

Finally, the Board noted, with concern, that the welfare committee in the community in question seemed to have taken on the duties of the Welfare Administrator. In the Board's view, compelling an applicant or recipient to be present before a committee could constitute publicising the name of a person in a public forum, in contravention of the legislation. **Appeal granted. Decision of the committee rescinded.** (13 pp; English)

REFERENCES: O.Reg. 441 s.10(1), s.6(1)(a); General Welfare Policy Guidelines, GW-0304-02■

STUDENTS

OTHER INDEX TERMS: DEPENDENT ADULTS; DISCRETION; ONTARIO STUDENT ASSISTANCE PROGRAM

File Number: J0822-15

Date of Hearing: April 16, 1991

The Applicant applied for general welfare as the head of a family with two dependants, namely her spouse and her infant child. The application was refused because her spouse was enrolled in an electronic engineering technician course at college and the course was not approved by the Administrator.

SUMMARIES OF DECISIONS

In the Board's view, the Administrator erred in interpreting O.Reg. 6(1)(c). The Administrator decided that the Applicant was ineligible because the educational institution which her husband was attending was eligible for an OSAP grant and not because the spouse was eligible for OSAP. However, the power to approve educational institutions and programs in s.6(1)(c) is made specifically subject to s.6(2) which indicates that the test for eligibility is whether the person is eligible for the grant, not whether the educational program or institution is eligible. In the Board's opinion, the Administrator expanded the scope of s.6(2) to prohibit both individual students and institutions which are eligible for OSAP grants.

The purpose of s.6(1) is to assist persons to complete their education in certain circumstances. Two types of discretion are contemplated by this section. First, a person wishing to qualify for assistance as a student must obtain the approval of the administrator to attend a course as a full-time student. Secondly, the course itself must also be approved. Moreover, it is an abuse of power to refuse to exercise discretion by adopting policies which fetter the ability to consider each case on its own merits.

The Board concluded that, because the circumstances of individual students were not considered when deciding whether or not to approve programs of education, the Administrator did adopt an inflexible policy which fettered his discretion. The Board has the authority to exercise its own discretionary power and approve or disapprove the course and the attendance

of the student in the course. However, the Board was unable to do so because the necessary evidence was not available.
Referred back. (12 pp; English)

REFERENCES: O.Reg. 441 s.6(1)(c), s.6(2); Re Kerr and the General Manager, Department of Social Services of Metropolitan Toronto, (Div. Ct.) 4 O.R. (3d) 430; Roncarelli v. Duplessis [1959] S.C.R. 122■

STUDENTS

OTHER INDEX TERMS:
UNEMPLOYMENT DUE TO
CIRCUMSTANCES NOT WITHIN
CONTROL

File Number: J1128-06
Date of Hearing: May 14, 1991

Shortly after the Applicant and his wife immigrated to Canada he found employment with an airline at an airport in another city. He resided at the home of a friend in the city where he worked while seeking housing. His wife remained in the first city where she also found employment. The Applicant was unable to find affordable housing in the city where he worked so he returned home and began to commute to work each day. The wife's hours of work were reduced which made the Applicant unable to afford to commute between cities. He decided that he must get more education to improve his job prospects with his employer. He was granted a six month leave of absence to do so.

GENERAL WELFARE ASSISTANCE ACT

The Applicant then enrolled as a full-time student in an upgrading course at an adult learning centre in order to complete his Ontario Secondary School Diploma. His spouse also began a program of home studies to improve her employability. Since both he and his wife were unemployed, he applied for assistance and was denied on several grounds.

The Administrator determined that the Applicant's decision to take a leave of absence rendered the family ineligible. The Board found that his decision to return to school did not render him ineligible. However, in the Board's view, the wife's unwillingness to make reasonable efforts to obtain employment did render the family ineligible. In the Board's opinion, O.Reg. 441 s.6(1) empowers the Administrator to exercise his discretion and determine that certain students are not required to be available for work. All others must be willing to accept employment and make reasonable efforts to obtain it.

The Board approved of the Applicant's decision to attend school to complete his High School diploma in the hope of securing a better job with his employer. It therefore found that his inability to seek full-time work should not be considered when determining eligibility for assistance.

The Administrator further argued that by taking a leave of absence, the Applicant became ineligible to receive Unemployment Insurance benefits. Since the Board found that the decision to complete his high school diploma was

warranted, it elected to exercise its discretion and found that the Applicant's inability to obtain Unemployment Insurance benefits did not render him ineligible.

The Board, however, viewed the circumstances of the Applicant's spouse differently. She was not attending an approved course of education, nor was she a full-time student. The Board found that, as a part-time student, she must be willing to accept employment and make reasonable efforts to obtain it, and that there were no special circumstances to exempt her from this requirement. The Board therefore agreed with the Administrator's decision to deny assistance to the Applicant. **Appeal denied. Decision of the Administrator affirmed.** (26 pp; English)

REFERENCES: O.Reg. 441 s.3(3), s.6(1); Re Kerr and the General Manager, Department of Social Services of Metropolitan Toronto, (Div. Ct.) 4 O.R. (3d) 430■

STUDENTS

OTHER INDEX TERMS: DISCRETION;
RESIDENCE

File Number: J1205-16

Date of Hearing: April 23, 1991

The Applicant was enrolled full-time in a college for basic training for skill development, a program of study equivalent to a secondary school

education. When she began the program, she commuted from another town. She later moved to the present municipality. The applicant was not completing an active job search because she was in school full time. The Applicant was found ineligible.

The Administrator gave the following reasons for denying approval of attendance in the program. First, the Applicant did not attend the job developer course which might have resulted in approval for school. Secondly, she was not resident in the city for six months and on assistance for three months, according to the local guideline for assessing problems in getting into the work force. Finally, she already had high school equivalency in her home country and apprenticeship papers as a seamstress.

The Applicant testified that her papers were not sufficient to get her a sewing job in Canada. She would need to take another course to get equivalent Canadian papers and would need more schooling to get any other kind of work. In the Board's view, the course was appropriate to her needs. There was no compelling reason for the Administrator to refuse to exercise his discretion and approve this course of study.

Because she was not a resident of the city when she began her course, the job developer program was not open to the Applicant. The Board noted that such a program is not mandatory under the legislation. Similarly, the requirement of six months residence in the city and three months on assistance pertains to approval

to start a course, not to continue with one. Such policies are not binding and are to be used only as guidelines. **Appeal granted. Decision of the Administrator rescinded.** (14 pp; English)

REFERENCES: O.Reg. 441 s. 6(1), s.6(2); Champagne v. The Administrator Department of Social Services (unreported, Divisional Court, April 24, 1986)■

UNEMPLOYMENT DUE TO CIRCUMSTANCES NOT WITHIN CONTROL

OTHER INDEX TERMS: CREDIBILITY

File Number: J1010-20

Date of Hearing: February 27, 1991

The Applicant applied for assistance and was found ineligible on the ground that he had quit his job and his unemployment was therefore within his control.

The Applicant and his employer had a history of poor relations. At one time, the Applicant discovered that he was making less than he had been led to believe and that the employer had advertised a similar position at a higher rate than the Applicant was receiving. The Applicant testified that he was fired for calling in sick. At the time in question, he had a fever and was unable to attend work. He telephoned and left messages on the employer's answering machine and sent a personal message with another worker.

GENERAL WELFARE ASSISTANCE ACT

The employer did not attend the Hearing but indicated in a letter that the Applicant had a poor work record and that he had quit his job to start a business with his brother. The major dispute about the facts was whether the Applicant quit his job or was fired. The Applicant suggested that the employer would not have to provide severance pay if he wrote that the Applicant quit his job rather than that he was fired.

In the Board's opinion, the Applicant's testimony was both consistent and credible. His explanations about the discrepancies between his testimony and the information from the employer were convincing and reasonable. The Board therefore preferred the Applicant's testimony and concluded that his loss of employment was due to circumstances beyond his control. **Appeal granted. Decision of the Administrator rescinded.** (8 pp; English)

REFERENCES: nil■

UNEMPLOYMENT DUE TO CIRCUMSTANCES NOT WITHIN CONTROL

OTHER INDEX TERMS: CREDIBILITY

File Number: J1017-03

Date of Hearing: July 18, 1991

The Applicant was working at a factory when his employment was terminated. His application for assistance was refused on the grounds that the Applicant was

unemployed for reasons within his own control.

The Applicant provided both solemnly affirmed oral evidence as well as a sworn statement. His testimony was that on the day that he was discharged because of a misunderstanding with his supervisor. The Applicant carried out an investigation which included a conversation with the supervisor and which differed from the testimony of the Applicant. The Board preferred the Applicant's evidence because the evidence provided by the Administrator was third-party hearsay. In addition, the Applicant testified in a straightforward manner and gave a consistent account of the events.

In the Board's opinion, the Applicant could not have foreseen his dismissal, let alone try to prevent it. The Board concluded that the Applicant was not unemployed for reasons within his own control. **Appeal granted. Decision of the Administrator rescinded.** (10 pp; English)

REFERENCES: nil■



PART III

DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT



SUMMARIES OF DECISIONS

BENEFITING FROM SERVICES

File Number: J0117-17

Date of Hearing: November 14, 1990

The Applicant had received various Vocational Rehabilitation Services since 1982. He suffered from diabetes and from an obsessive personality disorder. He applied to VRS for assistance in providing tuition, books, transportation, and a maintenance allowance while attending a computer programming course. Both VRS and the Applicant had agreed upon a vocational goal of computer programming and he had previously been sponsored in two computer programming courses which he had not completed.

The Applicant's position was that his physical condition had improved in the past years since he began using a home monitoring unit for blood sugar and an insulin pump. The latest report from his psychotherapist also indicated that a new medication had improved his psychological disorder. In addition, the Applicant had been working at a job for nearly two years. He submitted that he had held the job because his workload had sometimes been reduced or that he had taken a leave of absence to enable him to do his course work. The Director's position was that the Applicant's new medical treatment had not been effective enough to ensure that he would benefit from the course, and that because the Applicant had held gainful employment for one and a half years, he was no longer disabled.

The first issue was whether the Applicant

had been pursuing a substantially gainful occupation. The Board accepted the Applicant's testimony about his work difficulties, the reduction of hours and the leave of absence. In the opinion of the Board, he was not regularly and continuously employed during the period in question and was therefore a disabled person.

The second issue before the Board was whether the Applicant had benefited from services and had availed himself of services available to him. The Applicant testified, and the Board accepted, that his obsessive compulsive disorder was part of the reason why he had been unable to complete the courses for which VRS had previously sponsored him, and that he had now found treatment which was effective enough to enable him to finish his studies. His testimony was confirmed by letters from his psychotherapist. The Board therefore found that he was benefiting from the services provided for him.

The Director's decision to refuse services was also based on the fact that he had suggested alternative funding through CEIC and that the Applicant had not availed himself of this. The Board noted that the Applicant had pursued this referral to the point where he had concluded that he would not qualify, and that the Director had actually provided a referral for alternative funding, not the funding itself. The Board concluded that the Applicant had availed himself of this service. **Appeal granted. Decision of the Director rescinded.** (21 pp; English)

VOCATIONAL REHABILITATION SERVICES ACT

REFERENCES: Vocational Rehabilitation Services Act, s.1(b), s.9(a), 9(b), and 9(c)■

LEARNING DISABLED

OTHER INDEX TERMS: DISCRETION;
EDUCATIONAL PROGRAMS

File Number: K0227-26

Date of Hearing: July 10, 1991

The Applicant participated in an eight week assessment program sponsored by Vocational Rehabilitation Services. The results indicated that an attention deficit prevented the Applicant from doing sustained work. The recommendation was that he enter work adjustment training with a view to then obtaining employment in a sheltered workshop.

Based in part on a psychological assessment and in part on his own discernment, the Applicant requested instead that he attend a 34 week program at an out-of-town educational centre which specializes in preparing learning disabled persons for work in the mainstream. The Applicant registered in this program of his own accord. The Director denied his request on the grounds that the program was not appropriate. After analyzing the course content, the Director concluded that only about 20 percent of the program at the education centre would be newly relevant to the Applicant.

After a careful review and weighing of the evidence provided by his psychiatrist, a

learning disabilities specialist, and after a thorough assessment of the Applicant's learning disability, the Board found that attendance at the out-of-town education centre would improve the Applicant's ability to perform in the workplace. In the Board's view, he would be able to pursue employment in the competitive labour market, which was more suited to his abilities than a sheltered workshop. The Board concluded that attendance at the education centre was part of the Applicant's preparation for entry level work in the competitive marketplace. **Appeal granted. Decision of the Director rescinded.** (14 pp; English)

REFERENCES: O.Reg. 943 s.1(2)(a), s.1(2)(f); De Boni v. Director of Vocational Rehabilitation Services (unreported, Divisional Court, May 11, 1978)■

DISCRETION

OTHER INDEX TERMS:
RECONSIDERATIONS

File Number: G1006-18R

Date of Hearing: February 19, 1991

The Applicant suffered from retinitis pigmentosa which, with time, would end in total blindness. He applied to the Director for computer aids for use in his job as an accounting manager. The Director advised the Applicant that he was not eligible for services because he was currently employed and his family savings would permit him to purchase the required aids.

There were several issues before the Board. The first issue was whether the Applicant was a disabled person. The second issue was whether the Director has the discretion to refuse to provide goods and services to a disabled person and, if so, are the Applicant's financial circumstances a factor that the Director can consider in exercising his discretion.

The Board found that the Applicant, as a result of his eye condition, was not capable of either "pursuing regularly" his occupation or the "continued pursuance" of his occupation. The Applicant testified that in order to complete his work he had to work 50 to 60 hours per week and his wife had to read documents to him at home. In the Board's view, the use of the word "continued" suggests that the occupation will also occur in the future. The Board found that the Applicant was not able to continue to do his job without computer aids. Moreover, there was no question of whether the Applicant would be able to work at "optimum capacity"; but rather whether he could continue to work at all. The Board concluded that the Applicant was a disabled person.

In the Board's view, the legislation indicates that the Director has discretion as to whether to provide services to the Applicant, but the question is whether it is a reasonable exercise of this discretionary power to take an applicant's personal resources into account when deciding whether to provide these services. The policy in place at the time of the application was that employed applicants might be eligible if they could prove that they were unable to afford the

required aids. It was the opinion of the Board that this policy was not consistent with the legislation, and that the Director could not consider the Applicant's personal financial services, for the following reasons.

First, unlike other pieces of social assistance legislation, the Vocational Rehabilitation Services Act is not an income security program. If a recipient of services requires income to meet basic needs, it is dealt with under a different statute and is completely separate. This separation indicates that personal financial resources are not determinative of eligibility under the Vocational Rehabilitation Services Act.

Secondly, the legislation limits direct consideration of an applicant's income to certain defined circumstances, none of which were relevant to the case in question. Finally, the underlying philosophy of the Act is to promote, as much as possible, equality between the disabled and non-disabled with respect to access to the workplace. If disabled people had to pay to overcome these disadvantages, they would be disadvantaged twice: once by having a disability and, a second time, by having to pay to compensate for it. **Appeal granted in part. Original decision of the Board rescinded. Decision of the Director rescinded. Referred back in order to determine which goods and services should be provided.** (22 pp; English)

REFERENCES: Vocational Rehabilitation Services Act, s.6■

VOCATIONAL REHABILITATION SERVICES ACT

SATISFACTORY PROGRESS

OTHER INDEX TERMS: VOCATIONALLY DISABLED; FAILURE TO PROVIDE INFORMATION

File Number: J0820-10

Date of Hearing: April 9, 1991

The Applicant suffered from a vision impairment and was receiving Vocational Rehabilitation Services until his file was closed under subsections 9(c), 9(d), and 9(e) of the Act. The Applicant reapplied for services in order to request that his file remain open. The Director denied his request. The issues to be determined by the Board were whether the Applicant was benefiting from services, whether he was making satisfactory progress, and whether he provided the information required to determine continued eligibility.

The Director submitted that the Applicant had obtained incomplete and failing grades in his apprenticeship program. The Board, however, noted that the Applicant had successfully completed his grade twelve equivalent during the previous school year. Further, the Applicant satisfied the Board that extenuating circumstances, including his marriage breakdown, had contributed to his failure. The Board found that, because of these extenuating circumstances, the Applicant's failure to benefit and to make satisfactory progress were temporary.

The Director relied on subsection 9(e), failure to provide information, as a reason to close the Applicant's file. The testimony

of the Applicant conflicted with the Director's submission on this matter. The Applicant agreed, however, that he had left his program and left the province without advising his counsellor and did not contact him for some time afterwards. The Board concluded that this constituted grounds for the Director to close the file.

The Director also argued in his submission that the Applicant had obtained and maintained employment for a three-month period and that he had left this employment of his own accord. The Director, therefore, concluded that the Applicant could not be considered to be vocationally handicapped. The Applicant testified that he had lost his job after having damaged some equipment in the workplace because of his visual impairment. The Board found that the Applicant's employment, for a limited period of time in a non-skilled position, did not warrant disqualification from further Vocational Rehabilitation Services. However, for other reasons, the Board found that the Applicant was not a disabled person. There was no evidence that the Applicant required special equipment or services in order to return to the program in which he was enrolled. The Board therefore concluded that it was not the Applicant's visual impairment that prevented him from working in his chosen field, but rather his lack of training. The Applicant was not a disabled person, within the meaning of the Act. **Appeal denied. Decision of the Director affirmed.** (14 pp; English)

REFERENCES: Vocational Rehabilitation Services Act, s.9(c), s.9(d), s.9(e)■

BENEFITING FROM SERVICES

OTHER INDEX TERMS: SATISFACTORY PROGRESS

File Number: J0621-15

Date of Hearing: June 18, 1991

The Recipient had multiple sclerosis. She requested continuing sponsorship from Vocational Rehabilitation Services for her third academic year in a Bachelor or Science program at a university. The Director denied her request on the grounds that she was not benefiting from the services and was not making satisfactory progress towards rehabilitation.

Because of various exacerbations of her illness, at the end of two academic years the Recipient had successfully completed only 2.5 courses, and the Director had terminated services. The Director's position was that the pace at which the Recipient completed her courses did not meet existing VRS standards of two courses per term, although her grades were satisfactory. The Recipient's position was that any evaluation of her progress should make allowances for the unpredictable nature of her disease and that the speed of completion of a degree should not be the only criteria.

In the Board's view, it is realistic that the Director have certain standards respecting the pace of studies. The Board noted, however, that the Recipient was without technical aids in her first academic year, and that these would have been beneficial to her disability. Moreover, the Recipient

did meet the minimum standard of two completed courses in her second year. Given the unpredictability of the Recipient's disability, termination of services at that time on the basis of her pace of completion was premature. The Board, however, was not convinced by the Recipient's evidence that continuing sponsorship was feasible because there was a great deal of uncertainty about the suitability of her vocational plan to pursue a career in psychology.

The Board agreed with the Director that ongoing sponsorship must carry a reasonable expectation that the Recipient should obtain employment in the field of psychology. Part of the original plan was to test the feasibility of psychology as a vocational goal, but since this was never completed as planned, it would have been premature to refuse services until the doubts about the feasibility of her vocational plan were resolved and a more specific vocational goal established. The Board concluded that opportunities to evaluate the feasibility of her vocational goal be offered to the Recipient and that services not be cancelled unless that plan was rejected by her. The Board ordered that, should a vocational goal in psychology prove to be feasible, VRS should provide sponsorship. **Appeal denied in part. Decision of the Director denied in part.** (35 pp; English)

REFERENCES: Vocational Rehabilitation Services Act, s. 9(c), s.9(d); The Director of the Vocational Rehabilitation Services Branch of the Ministry of Community and Social Services v. Hackett, January 17, 1977■

CUMULATIVE INDEX

This index includes cases published in Volume 2:1 of
SUMMARIES OF DECISIONS.

**PART I: DECISIONS UNDER THE
FAMILY BENEFITS ACT**

CO-RESIDENCE

J0816-12
Volume 2:1 APR 1992 p.10

DEAF PERSONS

J0730-04
Volume 2:1 APR 1992 p.7

DISCRETION

K0129-32
Volume 1:2 APR 1992 p.6

EVIDENCE

J0920-23
Volume 2:1 APR 1992 p.9

EXTENSION OF TIME

J0827-28
Volume 2:1 APR 1992 p.13

FUNERALS AND FUNERAL PLANS

K0129-32
Volume 2:1 APR 1992 p.6

HOMES, HOSPITALS AND INSTITUTIONS,
PATIENT OR RESIDENT IN

H0208-10R
Volume 2:1 APR 1992 p.5
K0129-32
Volume 2:1 APR 1992 p.6

INSURANCE

K0206-16
Volume 2:1 APR 1992 p.8

JURISDICTIONAL ISSUES

J0702-08
Volume 2:1 APR 1992 p.11

LIEUTENANT GOVERNOR IN COUNCIL

J0702-08
Volume 2:1 APR 1992 p.11

LIQUID ASSETS

J0702-08
Volume 2:1 APR 1992 p.11
K0129-32
Volume 2:1 APR 1992 p.6

MEDICAL ADVISORY BOARD

J0918-05
Volume 2:1 APR 1992 p.9

MEDICAL CONDITIONS

J0918-05
Volume 2:1 APR 1992 p.9

MOTHER WITH DEPENDENT CHILDREN

H0208-10R
Volume 2:1 APR 1992 p.5

ONTARIO MOTORIST PROTECTION PLAN

K0206-16
Volume 2:1 APR 1992 p.8

OVERPAYMENTS

J0730-04
Volume 2:1 APR 1992 p.7
K0129-32

OVERPAYMENTS, cont'd

Volume 2:1 APR 1992 p.6

PAYMENTS RECEIVED

J0730-04

Volume 2:1 APR 1992 p.7

K0206-16

Volume 2:1 APR 1992 p.8

PERMANENTLY UNEMPLOYABLE PERSON

J0918-05

Volume 2:1 APR 1992 p.9

J0920-23

Volume 2:1 APR 1992 p.9

RECONSIDERATIONS

H0208-10R

Volume 2:1 APR 1992 p.5

SPOUSE

J0816-12

Volume 2:1 APR 1992 p.10

TRUSTS

J0702-08

Volume 2:1 APR 1992 p.11

J0827-28

Volume 2:1 APR 1992 p.13

**PART II: DECISIONS UNDER THE
GENERAL WELFARE ASSISTANCE ACT**

AGE

J1206-13

Volume 2:1 APR 1992 p.14

APPLICATIONS

J1206-13

Volume 2:1 APR 1992 p.14

CASUAL GIFTS

K0208-02

Volume 2:1 APR 1992 p.15

K0604-16

Volume 2:1 APR 1992 p.16

CONCURRING OPINIONS

J0214-23

Volume 2:1 APR 1992 p.25

CREDIBILITY

J1010-20

Volume 2:1 APR 1992 p.29

J1017-03

Volume 2:1 APR 1992 p.30

DEPENDENT ADULTS

J0822-15

Volume 2:1 APR 1992 p.26

DEPENDENT CHILD

J1127-27

Volume 2:1 APR 1992 p.17

DISCRETION

J0822-15

Volume 2:1 APR 1992 p.26

J1205-16

Volume 2:1 APR 1992 p.28

K0208-02

Volume 2:1 APR 1992 p.15

DRUG BENEFITS

K0130-03

Volume 2:1 APR 1992 p.24

EMPLOYABLE PERSON

J0920-06

Volume 2:1 APR 1992 p.18

J1112-12

Volume 2:1 APR 1992 p.19

FOSTER PARENTS AND CHILDREN

J1127-27

Volume 2:1 APR 1992 p.17

GARNISHMENT

J1205-21

Volume 2:1 APR 1992 p.21

J1227-12

Volume 2:1 APR 1992 p.22

HEAD OF A FAMILY

J0214-23

Volume 2:1 APR 1992 p.25

CUMULATIVE INDEX

INCOME

J1205-21
Volume 2:1 APR 1992 p.21
J1227-12
Volume 2:1 APR 1992 p.22
K0130-03
Volume 2:1 APR 1992 p.24
K0208-02
Volume 2:1 APR 1992 p.15
K0604-16
Volume 2:1 APR 1992 p.16

JOB SEARCH

J0920-06
Volume 2:1 APR 1992 p.18
J1112-12
Volume 2:1 APR 1992 p.19

JURISDICTIONAL ISSUES

J0106-11
Volume 2:1 APR 1992 p.25

LIQUID ASSETS

J0610-19
Volume 2:1 APR 1992 p.21
J0528-13
Volume 2:1 APR 1992 p.20

NATIVE PEOPLE

J0528-13
Volume 2:1 APR 1992 p.20

ONTARIO STUDENT ASSISTANCE PROGRAM

J0822-15
Volume 2:1 APR 1992 p.26

PAYMENTS RECEIVED

J1205-21
Volume 2:1 APR 1992 p.21
J1227-12
Volume 2:1 APR 1992 p.22
K0130-03
Volume 2:1 APR 1992 p.24
K0208-02
Volume 2:1 APR 1992 p.15
K0604-16
Volume 2:1 APR 1992 p.16

RESIDENCE

J1205-16
Volume 2:1 APR 1992 p.28

SHELTER

K0130-03
Volume 2:1 APR 1992 p.24

SPECIAL CIRCUMSTANCES

J1206-13
Volume 2:1 APR 1992 p.14

SPOUSE

J0214-23
Volume 2:1 APR 1992 p.25

STUDENTS

J0106-11
Volume 2:1 APR 1992 p.25
J0822-15
Volume 2:1 APR 1992 p.26
J1128-06
Volume 2:1 APR 1992 p.27
J1205-16
Volume 2:1 APR 1992 p.28

SUPPORT OR MAINTENANCE PAYMENTS

J1205-21
Volume 2:1 APR 1992 p.21
J1227-12
Volume 2:1 APR 1992 p.22

UNEMPLOYMENT DUE TO CIRCUMSTANCES NOT WITHIN CONTROL

J0920-06
Volume 2:1 APR 1992 p.18
J1010-20
Volume 2:1 APR 1992 p.29
J1017-03
Volume 2:1 APR 1992 p.30
J1128-06
Volume 2:1 APR 1992 p.27

UNEMPLOYMENT INSURANCE

J1205-21
Volume 2:1 APR 1992 p.21
J1227-12
Volume 2:1 APR 1992 p.22

SUMMARIES OF DECISIONS

PART III: DECISIONS UNDER THE
VOCATIONAL REHABILITATION SERVICES ACT

BENEFITING FROM SERVICES

J0117-17
Volume 2:1 APR 1992 p.31
J0621-15
Volume 2:1 APR 1992 p.35

DISCRETION

G1006-18R
Volume 2:1 APR 1992 p.32
K0227-26
Volume 2:1 APR 1992 p.32

EDUCATIONAL PROGRAMS

K0227-26
Volume 2:1 APR 1992 p.32

FAILURE TO PROVIDE INFORMATION

J0820-10
Volume 2:1 APR 1992 p.34

LEARNING DISABLED

K0227-26
Volume 2:1 APR 1992 p.32

RECONSIDERATIONS

G1006-18R
Volume 2:1 APR 1992 p.32

SATISFACTORY PROGRESS

J0820-10
Volume 2:1 APR 1992 p.34
J0621-15
Volume 2:1 APR 1992 p.35

VOCATIONALLY DISABLED

J0820-10
Volume 2:1 APR 1992 p.34

REFERENCES TO STATUTES AND REGULATIONS

Child and Family Services Act

s.14(i) and (ii)
J1127-27
Volume 2:1 APR 1992 p.17

Family Benefits Act, R.S.O. 1980, c.151

s.17
J0730-04
Volume 2:1 APR 1992 p.7

General Welfare Assistance Act, R.S.O. 1980, c.188

s.10(2)(c)
K0208-02
Volume 2:1 APR 1992 p.15

Indian Act

J0528-13
Volume 2:1 APR 1992 p.20

Ontario Regulation 318, R.R.O. 1980

s.1(1)(aa)
J0702-08
Volume 2:1 APR 1992 p.11
J0827-28
Volume 2:1 APR 1992 p.13

s.1(1)(aa)(vii)
K0129-32
Volume 2:1 APR 1992 p.6

s.1(1)(d)
J0816-12
Volume 2:1 APR 1992 p.10

s.3(2)(a)
J0702-08
Volume 2:1 APR 1992 p.11

CUMULATIVE INDEX

O.Reg. 318, cont'd

s.5(a)(i)

H0208-10R
Volume 2:1 APR 1992 p.5

s.8

J0827-28
Volume 2:1 APR 1992 p.13

s.13(1)

J0730-04
Volume 2:1 APR 1992 p.7
K0206-16
Volume 2:1 APR 1992 p.8

s.13(2)

J0730-04
Volume 2:1 APR 1992 p.7

s.14(3)

J0702-08
Volume 2:1 APR 1992 p.11

s.16(3)

K0129-32
Volume 2:1 APR 1992 p.6

Ontario Regulation 441, R.R.O. 1980

s.1(1)(i)

J0214-23
Volume 2:1 APR 1992 p.25

s.1(1)(k)

J0528-13
Volume 2:1 APR 1992 p.20
J0610-19
Volume 2:1 APR 1992 p.21

s.1(2)(b)

J0214-23
Volume 2:1 APR 1992 p.25

s.3(1)(b)(ii)

J1112-12
Volume 2:1 APR 1992 p.19

s.3(3)

J1128-06
Volume 2:1 APR 1992 p.27

s.3(3)(b)

J0528-13
Volume 2:1 APR 1992 p.20

s.6(1)

J1128-06
Volume 2:1 APR 1992 p.27
J1205-16
Volume 2:1 APR 1992 p.28

s.6(1)(a)

J0106-11
Volume 2:1 APR 1992 p.25

s.6(1)(c)

J0822-15
Volume 2:1 APR 1992 p.26

s.6(2)

J0822-15
Volume 2:1 APR 1992 p.26
J1205-16
Volume 2:1 APR 1992 p.28

s.10(1)

J0106-11
Volume 2:1 APR 1992 p.25

s.11(2a)

K0130-03
Volume 2:1 APR 1992 p.24

s.13(1)

J1227-12
Volume 2:1 APR 1992 p.22
K0130-03
Volume 2:1 APR 1992 p.24

s.13(1)(a)

K0208-02
Volume 2:1 APR 1992 p.15

s.13(2)11c

K0130-03
Volume 2:1 APR 1992 p.24

s.13(2)12

J1205-21
Volume 2:1 APR 1992 p.21
J1227-12
Volume 2:1 APR 1992 p.22

s.13(2)21

K0604-16
Volume 2:1 APR 1992 p.16

Ontario Regulation 943, R.R.O. 1980

s.1(2)(a)

K0227-26
Volume 2:1 APR 1992 p.32

SUMMARIES OF DECISIONS

O.Reg. 943, cont'd
s.1(2)(f)

K0227-26
Volume 2:1 APR 1992 p.32

Vocational Rehabilitation Services Act, R.S.O
1980, c.525

s.1(b)

J0117-17
Volume 2:1 APR 1992 p.31

s.6

G1006-18R
Volume 2:1 APR 1992 p.32

s.9(a)

J0117-17
Volume 2:1 APR 1992 p.31

s.9(b)

J0117-17
Volume 2:1 APR 1992 p.31

s.9(c)

J0117-17
Volume 2:1 APR 1992 p.31
J0621-15
Volume 2:1 APR 1992 p.35
J0820-10
Volume 2:1 APR 1992 p.34

s.9(d)

J0621-15
Volume 2:1 APR 1992 p.35
J0820-10
Volume 2:1 APR 1992 p.34

s.9(e)

J0820-10
Volume 2:1 APR 1992 p.34

General Welfare Policy Guidelines

GW-0303-03

J1112-12
Volume 2:1 APR 1992 p.19

GW-0304-02

J0106-11
Volume 2:1 APR 1992 p.25

DEFINITIONS

"absent"

J0214-23
Volume 2:1 APR 1992 p.25

"foster child"

J1127-27
Volume 2:1 APR 1992 p.17

"on behalf of"

J1205-21
Volume 2:1 APR 1992 p.21
J1227-12
Volume 2:1 APR 1992 p.22

"payment"

K0604-16
Volume 2:1 APR 1992 p.16

"reasonable"

J0920-06
Volume 2:1 APR 1992 p.18

REFERENCES TO MANUALS

Family Benefits Policy and Procedural Guidelines
Manual

Index #12

K0129-32
Volume 2:1 APR 1992 p.6

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DECISIONS**

Volume 2, Number 2

July 1992



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This publication is divided into three parts. Part I contains summaries of decisions that relate to the Family Benefits Act. Part II contains summaries of decisions relating to the General Welfare Assistance Act, and Part III contains summaries of decisions relating to the Vocational Rehabilitation Services Act.

Each decision summarized in this publication is assigned a number of different index terms which reflect its content. The summaries appear under the one heading which best expresses the most noteworthy issue under discussion in each decision. This heading is in **BOLD** type at the beginning of each summary. These headings are arranged in alphabetical order within Part I, Part II, and Part III.

Other index terms which apply to a decision are listed separately to provide a further indicator of content.

Example:

CATEGORICAL ELIGIBILITY

OTHER INDEX TERMS: JOINT CUSTODY; RECONSIDERATIONS;
SINGLE PARENT WITH DEPENDENT CHILDREN

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The disposition of the case, the number of pages in the full text version of the decision, and the language in which the decision was written appear as the last sentence in the summary. Certain decisions have both an English and French language version available.

Example:

Appeal denied. (16 pp English; or 18 pp French)

REFERENCES

These references are to documents and authorities considered in and commented on in some detail by the Board in its findings. They are further indicators of the relevance of the decision. The list may include, in this order: federal and provincial statutes, regulations, cases, books, treatises and manuals. Terms whose meanings are discussed in a significant way appear in quotation marks at the end of the list.

Example:

General Welfare Assistance Act s.7(1); Re Richardson and the Commissioner of Metropolitan Toronto Department of Social Services (1988), 46 O.R. (2d) 63; "reside"

CUMULATIVE INDEX

A cumulative index to this publication is included with each issue. Use it to find summaries of decisions on specific subjects of interest to you.

References to summaries in the current issue are integrated with references from preceding issues in this list. Therefore, the most recent index can also be used to find decisions summarized in previous issues. KEEP YOUR BACK ISSUES FOR FUTURE REFERENCE. At the beginning of each year we will begin a new index.

The cumulative index is divided into the same three parts as the rest of the publication. Part I of the index refers to the Family Benefits Act. Part II refers to the General Welfare Assistance Act, and Part III to the Vocational Rehabilitation Services Act.

The index is arranged in alphabetical order by subject within each of the Parts. Each decision appears under several different index terms to provide a detailed guide to its content. Note that headings are of many different types. Factual, procedural, and conceptual terms are used and the names of statutes or programs may also appear as index terms.

Example:

| | |
|--|--------------|
| DRUG BENEFIT | (factual) |
| EXTENSION OF TIME | (procedural) |
| ONUS | (conceptual) |
| <u>CANADIAN CHARTER OF RIGHTS AND FREEDOMS</u> | (statute) |
| S.T.E.P. | (program) |

HOW TO USE THIS PUBLICATION

The left hand side of each index page shows the index terms and the File Numbers of all of the decisions which contain information on these subjects.

Example:

EXTENSION OF TIME
H0321-05

Information on the right hand side of each index page shows where the summaries of decisions on any given topic originally appeared in our publication. Details about page number, issue number, and issue date are provided.

PART I

DECISIONS UNDER THE
FAMILY BENEFITS ACT

BOARD AND LODGING

OTHER INDEX TERMS: RENT

File Number: K0422-08

Date of Hearing: February 26, 1992

The Recipient was granted an allowance as a disabled/permanently unemployable person. He suffered from a developmental handicap. He had shared a home with his friend A., a professional social worker, for ten years. A. guided and handled the Applicant's affairs. He did this on a volunteer basis, as a support for his friend, the Recipient.

The Recipient completed a mail-out Client Information Update Report with the assistance of A. The report indicated that the Recipient was boarding with A. The officer who reviewed the document noticed that the Recipient was receiving an allowance based on rent rather than on room and board. The Recipient's allowance was therefore reduced.

In the course of an explanatory telephone call, A. indicated that he was not aware of the Ministry's definitions "boarding" and "renting", nor of the French translation of these terms. After he was made aware of the distinction, he believed

that he had made an error when completing the form.

A. submitted that the Recipient had always been living in a rental situation. He testified that he had always provided the Recipient with rental receipts and that the Recipient's living arrangements were considered "rental" for income tax purposes. He testified also that the rent paid included shelter costs alone.

Moreover, although grocery shopping was normally done together when both were at home, the Recipient selected and paid for his own food. They sometimes shared the dining table at meal time, but each prepared his own individual food. The Board therefore concluded that A. provided the shelter but not the food, therefore the Recipient was in a rental situation. **Appeal granted. Decision of the Director rescinded.** (9 pp; English)

REFERENCES: O.Reg. 318 s.30(4) and (5), s.30(5a); Family Benefits Policy and Procedural Guidelines Manual, Index #53, s.4.0■

DAMAGES OR COMPENSATION FOR
PAIN AND SUFFERING

OTHER INDEX TERMS: INCOME;
STRUCTURED SETTLEMENTS

File Number: J0230-08

Date of Hearing: October 2, 1991

The Recipient had received an allowance as a disabled person for several years.

FAMILY BENEFITS ACT

While receiving benefits, he was injured in a motor vehicle accident and the court awarded him \$18,712.50 as damages for pain and suffering. In a structured settlement, the award was used to purchase an annuity. This resulted in monthly payments to the Recipient of \$155.68. The issue to be determined by the Board was how the income paid from an annuity purchased with funds from an award for pain and suffering should be treated.

In a structured settlement, the award is invested and generates income. Therefore, the annuity increases in value and the money paid back to the individual is more than the original amount of the annuity. Although amounts for pain and suffering less than \$25,000 are exempt, the interest earned is not exempt because interest is not received for pain and suffering. In a structured settlement, however, there are many factors which do not allow a simple separation of principal and interest on a monthly basis.

Since amounts received for pain and suffering up to a maximum of \$25,000 are exempt as assets and income under the legislation, the Director calculated an exemption against the Recipient's allowance. By applying a policy guideline, the Director determined that the exempt portion of the monthly income was \$42.44 and began deducting \$113.24 from the Recipient's allowance. This policy calculates the amount of the monthly income charge by assuming that the annuity will be paid to age 65. To find the exempt portion, the award is divided by the number of months to age

65, and that amount is deducted from the income received by the structure. In the Director's opinion, spreading the exemption over the structure treats recipients in the most consistent way and protects them from an uneven lifestyle when the payments are no longer exempt.

In the Board's view, the Director's policy is neither unsound or unreasonable and was developed in the best interests of the majority. However, the Recipient's case was unusual since the award for pain and suffering was relatively small and the monthly payments of \$155.60 would not have disqualified him from an allowance. Consequently the Director's policy was not to his benefit. Since nothing in the legislation prevents the Board from exempting the entire monthly payment until the total exemption limit is reached, and this manner was the Recipient's desire, the Board concluded that this should be done.

Moreover, while legislation specifies that the exemption can be up to a maximum amount of \$25,000, in the Board's view, this does not imply a flat \$25,000 exemption. In this case, the amount ordered by the court was \$18,712.50. To allow for a greater exemption than this award would be a misinterpretation of the legislation. **Appeal granted. Decision of the Director rescinded.** (14 pp; English)

REFERENCES: O.Reg. 318, s.13(2)41; Family Benefits Policy and Procedural Guidelines Manual, Index #17■

FAMILY BENEFITS ACT

HANDICAPPED CHILDREN

OTHER INDEX TERMS: DISCRETION;
INCOME

File Number: K0501-19

Date of Hearing: November 22, 1991

The Applicant's mother applied for a Handicapped Children's Benefit for the Applicant who, at the age of six years, could neither walk nor eat solid food. The Director found the Applicant to be ineligible because the combined family income of \$58,144 exceeded the allowable limit.

The family testified that their expenses related to caring for their child were \$518.85 per month, which is in excess of the \$350 maximum payable.

The Board recognized that the Director made his determination of ineligibility using the sliding scale of entitlement which is based on income and which appears in the policy manual. However, the policies of the Director are not binding on the Board, and it is within the discretion of the Director to pay a benefit.

The Board accepted the testimony of the parents that the family's ability to pay the additional costs related to their disabled child was severely limited. The Board concluded that the Applicant was eligible for a \$25-plus-benefit monthly Handicapped Children's allowance. **Appeal granted. Decision of the Director rescinded.** (10 pp; English)

REFERENCES: O.Reg. 318 s.38(2), s.38(3)(d); Family Benefits Policy and Procedural Guidelines Manual, Index #76, Appendix 1■

HANDICAPPED CHILDREN

OTHER INDEX TERMS: ORDER IN
COUNCIL

File Number: K0825-30

Date of Hearing: February 12, 1992

The Recipient received \$700 per month in Handicapped Children's Benefits for two of his children who were severely disabled. The amount of benefits was based on his gross income of \$52,559, his family size and the number of handicapped children. When the handicapped son died, the Director reduced the amount of benefits to \$65 per month.

The issue in this appeal was whether the Recipient was entitled to more money, on the basis that the new amount was much less than half of the original amount received for two children, and on the basis that expenses for his daughter had exceeded those of his son.

The Board noted that nothing in the legislation establishes the specific amount of benefit for a handicapped child, except to stipulate that it cannot exceed \$350 per month per child. The amount of benefit is fixed by the Director, who has established a schedule of payments in the policy manual and who has discretion to determine the allowance in individual cases. However, neither the Board nor the

FAMILY BENEFITS ACT

Director is bound by this schedule.

In the Recipient's case, there were direct monthly expenses related to the maintenance of his daughter that amounted to \$931. The daughter required a fully equipped hospital room in the home, other special equipment, and a great deal of professional nursing care. The monthly expenses for the entire family, many of which were associated with the needs of the disabled daughter, totalled \$2,788. Monthly expenses weighed against income showed a deficit of \$150 per month. Since the Recipient's allowance was reduced, he himself had also paid out \$835 per month to maintain his daughter. Moreover, he was obliged to incur debts because of his children's disabilities and because of the death of his son. The Recipient's finances were in a downward spiral and the family in crisis.

Given the extraordinary circumstances in this case, the Board recommended that the family be given the maximum allowable benefit and that consideration be given to providing additional monthly benefits of \$150 as parental relief. The Board further recommended an Order in Council to supplement the monthly benefit up to a total of \$500. **Appeal granted. Decision of the Director rescinded.** (16 pp; English)

REFERENCES: O.Reg. 318, s.38; Family Benefits Policy and Procedural Guidelines Manual, Index #76: Parental Relief■

SINGLE PARENT WITH DEPENDENT CHILDREN

OTHER INDEX TERMS: EDUCATIONAL INSTITUTIONS; EXTENSION OF TIME; FINANCIAL HARDSHIP; OVERPAYMENTS

File Number: K0520-24

Date of Hearing: February 25, 1992

The Recipient had been receiving an allowance as a sole-support mother, with one dependent child. The Director cancelled her allowance because her child was in attendance at a class of educational institution not defined by the legislation. Her allowance was later reinstated as a single disabled person and the Director began to recover the overpayment at the rate of \$31.05 per month.

The Recipient's son, who was 19 years of age, was attending an equestrian school in another country. The Recipient explained that her son had great difficulty in both mainstream and alternative schools, and that attending an equivalent school in Canada was far beyond her financial means. She described the school as a trade school where her son was an apprentice, learning all aspects of caring for and riding horses, and that he would return to Canada with a useful trade.

The legislation requires that the dependent child reside in Ontario, whereas the Recipient testified that her son had not returned to Ontario since beginning school because he could not afford to travel. Moreover, the definition of "dependent child" requires that a child

be supported by his mother, and the Recipient admitted that she had not done so. The Board concluded that the son was not a "dependent child".

The Board noted that the Education Act does not give the province of Ontario jurisdiction to establish schools outside Ontario, nor was the equestrian school an institution designated under the Canada Student Loans Act. The Board concluded that the Director properly imposed an overpayment against the Recipient. However, because of the Recipient's financial hardship, the Board ordered that the deduction be reduced to \$20 per month. **Appeal granted in part. Decision of the Director affirmed in part.** (10 pp; English)

REFERENCES: Family Benefits Act s.1(f)(i); O.Reg. 318 s.1(2)■

ONTARIO MOTORIST PROTECTION PLAN

OTHER INDEX TERMS: DAMAGES OR COMPENSATION FOR PAIN AND SUFFERING; INCOME; PAYMENTS RECEIVED; INSURANCE

File Number: J1108-17

Date of Hearing: November 5, 1991

The Recipient was receiving an allowance when she was injured in a motor vehicle accident. As a result of the accident, she was eligible for no-fault insurance benefits payable under the Ontario Motorist Protection Plan. She received a

total payment of \$940 in a one-month period.

Because of her injuries, the Recipient was unable to care for her child. She requested homemaking help from her field worker. Before this help became available, the Recipient had made arrangements with a friend to assist her with child care and household maintenance. The friend refused payment for this help.

Because she had received insurance benefits, the Recipient's allowance was suspended for one month and subsequently reinstated, after deduction of the \$940 the Recipient had received. The issue before the Board was whether the payment received under the Insurance Act was "income" within the meaning of the Family Benefits Act.

The Board found that the \$235 paid to the Recipient each week during the month of her injury were payments received by the Recipient within the meaning of the legislation. The Board then found that the \$185 per week that the Recipient received under s.13(1) of the No-Fault Benefits Schedule was not an award for damages for pain and suffering. There were several reasons. Compensation for pain and suffering is traditionally a lump sum or structured settlement, not weekly benefits. Moreover, the Recipient's pain and suffering from her accident did not end when she received her last weekly benefit. Next, all eligible injured persons receive a flat rate weekly payment regardless of the extent of their injuries whereas pain and suffering awards are usually tied to the

FAMILY BENEFITS ACT

extent of the injuries. Although the Recipient had incurred pain and suffering as a result of the accident, the Board concluded that the no-fault insurance benefit was not compensation for this pain and suffering.

The Board also found that the Recipient was entitled to deduct "expenses actually and reasonably incurred" in having her friend present in her home. These expenses were largely because of needing extra groceries. Because the Board could not determine the amount, the determination of these expenses was referred back to the Director. The final amount was to be deducted from the no-fault payment. **Appeal denied in part. Decision of the Director affirmed in part. Determination of expenses referred back.** (10 pp; English)

REFERENCES: Insurance Act, No-Fault Benefit Schedule, s.13(1) and s.13(4); O.Reg. 318, s.13(1), s.13(2)41; "incur"■

OVERPAYMENTS

OTHER INDEX TERMS: AGE;
BENEFICIARIES; REFUGEES

File Number: K0426-03

Date of Hearing: January 9, 1992

The Recipient's wife and daughters arrived in Canada as refugees. His wife obtained General Welfare Assistance. She was then granted a Family Benefits allowance as a sole-support parent.

The Recipient came to Canada a few months later to join his family, and made a refugee claim. He requested that he be included in his wife's Family Benefits allowance. His request was denied and his wife's allowance suspended. At the same time, he was granted General Welfare Assistance. He was later granted a Family Benefits allowance as an aged person with dependants.

An overpayment of \$2,024 was assessed for the period when the Recipient first came to live with his family after arriving in Canada, on the grounds that his wife was no longer a sole-support parent. The Recipient was advised that this overpayment, incurred by his wife, must be repaid by him. The Recipient also appealed this decision. The Board found that the Director was correct in assessing the overpayment. However, the issue was whether the Director had the authority to transfer the overpayment from the Recipient's wife to the Recipient.

The legislation allows the Director to recover an overpayment from a recipient. When the Director began to recover the overpayment, the Recipient was the recipient; his wife was not. However, the overpayment had not been paid out to him, it was paid to his wife who was the recipient prior to the Director's decision.

The Board concluded that the legislation does not authorize the Director to recover the overpayment assessed against the Recipient's wife by reducing the Recipient's allowance, and that Index #64 is inconsistent with the legislation. In this situation, the Director's legal remedy to

recover an overpayment is to pursue proceedings in a court of competent jurisdiction. (6 pp; English)

REFERENCES: Family Benefits Act, s.17; Family Benefits Policy and Procedural Guidelines Manual, Index #64; "recipient"■

OVERPAYMENTS

OTHER INDEX TERMS: BENEFICIARIES; EXTENSION OF TIME

File Number: K0805-02
Date of Hearing: March 11, 1992

The Recipient was a sole-support widow with one dependent child. Her late husband had received an allowance as a permanently unemployable person, at which time the Recipient was a beneficiary under his allowance. When he died there was an outstanding overpayment of \$2,780. This was transferred to the Recipient's file on the grounds that she was a beneficiary of her husband's allowance, and because the overpayment had been caused by fluctuations in her earnings. The Board extended the time for the appeal because the Recipient had received a number of conflicting communications that had confused her.

The substantive issue before the Board was whether the Director was entitled to make deductions from the Recipient's allowance for an overpayment incurred by her deceased husband.

The Recipient's legal representative argued that the authority to recover, from the Recipient, an overpayment incurred by a Recipient's spouse, must be specifically stated in the legislation. The representative further argued that s.17 of the Family Benefits Act permits the Director to recover money paid in error to the Recipient, but that at the time when this overpayment was established, the Recipient was not a recipient but a beneficiary.

In the Board's view, there are separate definitions for "recipient" and "beneficiary" in the legislation and the two are not interchangeable. Therefore, s.17, the Director's cited authority for the recovery, does not specifically allow the Director to collect an overpayment from the survivor of a recipient who incurred an overpayment. In addition, Index 64 states that the surviving spouse cannot be held responsible for an overpayment incurred by the deceased without the consent of the survivor, and the Recipient had not consented to the deduction.

The Board concluded that there was no legislative authority to allow recovery from any person other than the recipient who incurred the overpayment. **Appeal granted. Decision of the Director rescinded.** (7 pp; English)

REFERENCES: Family Benefits Act, s.1(1), s.1(c), s.17; Re Finlay and Director of Welfare (1976), 71 D.L.R. (3d) 597 (Man. C.A.); Family Benefits Policy and Procedural Guidelines Manual, Index #64; "beneficiary"; "recipient"■

FAMILY BENEFITS ACT

PERMANENTLY UNEMPLOYABLE PERSON

OTHER INDEX TERMS: EVIDENCE

File Number: J0516-12

Date of Hearing: September 18, 1991

The Recipient had received an allowance as a permanently unemployable person since 1987. He suffered from chronic low back pain and knee pain accompanied by chronic pain syndrome, psychogenic rheumatism, and psychological problems.

The Director received an anonymous complaint that the Recipient had worked the previous summer, and therefore reviewed his medical status. His assistance was terminated on the grounds that he was no longer a permanently unemployable person.

The Board noted that the Recipient was originally granted an allowance because of chronic pain syndrome. After the anonymous complaint, the Medical Advisory Board seemed to decide that the Recipient could work if he wanted to. They appeared to base their decision partly on the complaint and partly on the fact that the Recipient was only 37 years of age. The Recipient testified that he had not been employed and that his testimony should be preferred to an anonymous complaint. The Director was not represented at the hearing, therefore there was no additional evidence on this allegation.

The Board gave very little weight to the unsubstantiated anonymous complaint

and preferred the sworn testimony of the Recipient. In fact, the evidence suggested that the Recipient's pain prevented him from engaging in physical work. In the Board's view, the preponderance of the evidence indicated that there was a major psychological barrier to the Recipient's employability. Although his back and knee problems did not prevent him from doing light work, his chronic anxiety did. The Recipient could not do farm work or labouring, the only areas where his work experience lay. Moreover, he was a unilingual francophone. These factors combined to render him unable to engage in remunerative employment. **Appeal granted. Decision of the Director rescinded.** (10 pp English; 11 pp French)

REFERENCES: nil■

SPOUSE

OTHER INDEX TERMS: CO-RESIDENCE; CREDIBILITY; ONUS

File Number: K0919-03

Date of Hearing: March 31, 1992

The Recipient was receiving an allowance as a permanently unemployable person. A friend of the Recipient began to reside in her home and had continued to live there continuously for more than three years. The Director determined that the living situation amounted to a spousal relationship and suspended the Recipient's benefits.

The Recipient and her friend were both

disabled persons. She testified that they resided together in a working relationship for their mutual benefit, to share expenses and to assist each other.

According to the legislation, after a period of co-residence of three or more years, the Recipient is deemed to be in a spousal relationship unless the Recipient shows that the relationship did not amount to cohabitation. The Board found the Recipient to be a credible witness who readily admitted to certain aspects of her relationship which had potential to be prejudicial to her case.

In the Board's opinion, the evidence indicated that some aspects of the relationship were spousal, but many were not. For example, the fact that the couple spent Christmas together and socialized with mutual friends might indicate a spousal relationship. On the other hand, these same factors might also indicate a friendship. The economic relationship between the two showed a total lack of sharing of assets and funds, indicating a non-spousal relationship. Moreover, in the Board's view, the Director placed excessive weight on the answers to a small number of questions. On the totality of the evidence, the Board concluded that the Recipient had satisfied the burden of proof. **Appeal granted. Decision of the Director rescinded.** (10 pp; English)

REFERENCES: O.Reg. 318 s.1(1b); Re Pitts and Director of Family Benefits Branch of the Ministry of Community and Social Services (1985), 51 O.R. (2d) 302.■

SUPPORT OR MAINTENANCE PAYMENTS

OTHER INDEX TERMS: AVAILABLE FINANCIAL RESOURCE; CREDIBILITY; PUTATIVE FATHER

File Number: K0717-19

Date of Hearing: February 4, 1992

The Recipient began to receive an allowance as a sole-support parent with one child. At the time of her application, she said that the father of her son was a man she had met at a bar and had never seen again. The Director concluded that, in these circumstances, it would have been unreasonable to ask the Recipient to seek support.

Two years later, the Recipient contacted her worker to say that another man, A., was probably the father of her son. She admitted that she had known of his whereabouts for some time and had decided to provide this information because A. had assaulted her and was taking court action to gain access to the child. The Director made the decision to reduce the Recipient's allowance by \$75, the minimum allowable when there is no financial information about the father's ability to pay support.

On the evidence of the Recipient, the Board determined that A. was probably the father of the child. The issue before the Board was whether the Recipient's actions were a reasonable effort to obtain support. The Recipient testified that A. had a long criminal record and gave examples of his frequent threats and

GENERAL WELFARE ASSISTANCE ACT

assaults on her.

The Board did not condone the Recipient's lie in misleading the Director about the identity and whereabouts of the child's father. The Director has a policy of not requiring individuals to seek support in such circumstances, but the Recipient did not know about it. The Board found the witness to be credible and straightforward. She admitted that she had laid an assault charge against A. on only one occasion, and had failed to obtain a conviction.

In the Board's view, it might seem incongruous that, despite her fear of A., the Recipient had allowed him into her apartment and gave him money when he threatened her. The Board, however, noted that the Recipient's actions and inactions were typical of those of an abused person. The Board concluded that this was an unusual case where the Recipient's refusal to pursue support was reasonable in the circumstance. (7 pp; English)

REFERENCES: Re Pitts and Director of Family Benefits Branch of the Ministry of Community and Social Services (1985), 51 O.R. (2d) 302.■

DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

INCOME

OTHER INDEX TERMS: PAYMENTS RECEIVED; TAXES; UNEMPLOYMENT INSURANCE

File Number: K1006-17

Date of Hearing: April 15, 1992

The Recipient was granted assistance as a married head of household with two dependent children. When his application was completed, the Administrator calculated his Unemployment Insurance benefits at \$882.70 gross per month. This calculation was \$190 gross per week times 4.33, in accordance with the policy manual. The Recipient reported to the Board that he receives \$171 per week, not the amount calculated by the Administrator. The Recipient asked the Board to determine whether he was receiving the correct entitlement.

The spokesperson for the Administrator testified that she was following the policy of the department regarding the treatment of U.I. benefits. The Board is not bound by the policies of the Administrator but must consider these policies as possible interpretations of the legislation. Furthermore, the Administrator cannot fetter his discretion by simply adopting a guideline without considering the merit of

SUMMARIES OF DECISIONS

each individual case.

After reviewing the case law on the subject, the Board found that income tax deductions are not part of the Recipient's income, nor should they be considered payments "received by or on behalf of" a Recipient when calculating entitlement. The net amount of U.I. benefits must be used.

The Board also considered the question of whether the Administrator has the authority to convert U.I. payments into a monthly amount by multiplying by 4.33, an amount which makes allowance for those months that have five weeks. In the Board's opinion, there is little legislative authority for this practice although there are some positive reasons for doing so. It is of particular concern when a Recipient ceases to receive assistance because there is no review to ensure that the averaging has not denied the recipient assistance to which he or she was entitled. In this particular case, averaging resulted in an inflated differential of \$56.43, calculated using the net amount of benefits. The differential was higher when the gross amount was used. The Board concluded that the Recipient's Unemployment Insurance benefits should be computed based upon the actual payments received and should not be averaged. **Appeal granted. Decision of the Administrator rescinded.** (11 pp; English)

REFERENCES: O.Reg. 441 s.13(1), s.13(2), s.13(7) ■

LIQUID ASSETS

OTHER INDEX TERMS: EVIDENCE; FAILURE TO PROVIDE INFORMATION; PARTNERSHIPS

File Number: K0116-13

Date of Hearing: July 10, 1991

The Recipient, his wife and son went to live in their cottage. He received assistance for a one-month period. His assistance was then suspended by the Administrator on the basis that he had failed to provide adequate information to determine eligibility. After a meeting, the Recipient was reinstated for several months, at which time he received notice that his assistance would again be terminated. The issues before the Board were whether the Recipient had assets in excess and whether he failed to provide the Administrator with the required information.

The Recipient's cottage property was not a liquid asset because it was his principal residence. However the Recipient was also in partnership and the partnership owned several neighbouring lots of land. Since most of the properties owned by the partnership were adjacent to or in the vicinity of the Recipient's cottage, the extent of the cottage property was in dispute.

The Administrator submitted that the principal residence property consisted only of the one lot where the cottage was built, as was shown on the plan of the subdivision. It was the only lot in the subdivision registered in the name of the

GENERAL WELFARE ASSISTANCE ACT

Recipient and his wife. The remaining lots in question were registered in the name of the partnership. The Recipient submitted that all of the lots in the subdivision were part of his cottage property, and therefore part of his principal residence.

The plain and ordinary meaning of the term "principal residence" is the home in which a person lives. While a principal residence encompasses more than just a building, there was no evidence in this case that the Recipient exercised any real "use and enjoyment" of the disputed property. The Board concluded that none of the partnership land formed part of the Recipient's principal residence.

The next issue before the Board was whether the partnership land could be readily converted into cash. The Recipient did not own the land directly but had an interest in the partnership. The land was an asset of the partnership and disposition of the land must be by consent of the partners.

The Board concluded that a number of the partnership assets could have been readily converted into cash by the Recipient. His partner had been requesting a settlement of various partnership issues for several years. The Recipient had always taken the position that he did not wish to sever the partnership but would do so for the right price, and without any cost to himself. In the Board's view, an individual cannot receive social assistance and retain assets in the hope of someday realizing a greater value for these assets.

The legislation requires that applicants and recipients provide all relevant information needed to determine eligibility. The evidence before the Board was that the information about the properties that was provided by the Recipient was inadequate. Moreover, information about an earlier disposition of business assets and about the sale of a building owned by the Recipient's wife had not been disclosed. The Board concluded that the Administrator correctly exercised his discretion in cancelling assistance on the grounds of failure to provide information. **Appeal denied. Decision of the Administrator affirmed.** (30 pp; English)

REFERENCES: "principal residence" ■

LIQUID ASSETS

OTHER INDEX TERMS: ASSIGNMENT

File Number: K0404-05

Date of Hearing: October 1, 1991

The Recipient received a sum of \$67,000 as part of her separation settlement. This payment, received from the sale of the matrimonial home, was made directly to the Recipient's son, at the request of the Recipient. The issue before the Board was whether the assignment of funds was made for inadequate consideration or for the purpose of qualifying for assistance.

The Recipient testified that, over a period of 12 years, her son had paid her approximately \$500 per month in cash

payments. He did this because the Recipient lived with an alcoholic and abusive spouse who was not financially dependable, and she had no income of her own. In total, the Recipient estimated that her son had given her approximately \$73,000. She testified that she had always promised to repay him out of her share of the matrimonial home, however there was no written agreement, no receipts, and no I.O.U.'s.

The first matter to be decided was whether it was the Recipient's express purpose to continue receiving assistance by having the total amount paid to her son. There must be a specific intent before the person can be found ineligible. The Recipient testified that she had given no thought to the impact of her actions on her entitlement and that she did not know that an assignment of money would jeopardize her eligibility. The Board accepted her testimony.

Was the assignment of the money made for inadequate consideration? The underlying question was whether the money paid over the years by the son could be considered a debt. The financial arrangement had not been made at arm's length, as one would make with a bank or other financial institution. More importantly, there was no evidence of a pressing need to repay; in the Board's view, the money was repaid rather out of a sense of moral obligation. There is little to support the notion that the financial arrangements between the Recipient and her son amounted to a debt.

The Board concluded that, by transferring

the proceeds of the separation settlement to her son when there was no actual debt, instead of using the money for her own maintenance, the Recipient had transferred those assets for inadequate consideration. **Appeal denied. Decision of the Administrator affirmed.** (18 pp; English)

REFERENCES: O.Reg. 441 s.5(1)■

LIQUID ASSETS

OTHER INDEX TERMS: FARMS AND FARMERS

File Number: K0506-02

Date of Hearing: February 26, 1992

The Recipient owned a 140-acre farm which he operated as a cow/calf operation, breeding his cows to produce calves which are sold to produce the farm's income. He had owned the farm for fifteen years and, in the past, had sufficient income from the farm and from his father to operate the farm and support himself.

The Recipient applied for assistance and was granted one month's assistance. The Administrator later determined that the Recipient was not eligible for further assistance as his cattle were available liquid assets which could be sold one at a time, as required for living expenses.

The Board concluded that the Recipient's calves were liquid assets. They could be readily converted into cash, which was

GENERAL WELFARE ASSISTANCE ACT

indeed the reason for breeding them. Moreover, the longer a calf is kept the more money a farmer receives from its sale. The Recipient estimated that the average value of his calves at the time of his appeal was \$400 each, if they were kept for seven months, their value might be \$700 each. The Recipient's entitlement for one month's assistance was \$401.33. Therefore the Recipient would have to sell only one calf in the first month to equal this amount and meet his basic living expenses. He would not be required to sell off all his calves to sustain himself for the month. Moreover, a few months later, the calves would be older and would bring in more money.

The legislation does not stipulate an allowable limit for liquid assets, however, the Administrator had adopted the limit set out in the provincial policy guidelines, which was a maximum of \$2,500. The Board found that this limit was not unreasonable. At the time of the appeal, the Recipient's calves were valued at between \$3,200 and \$6,800, depending on their age. Therefore, the Recipient's liquid assets were in excess of the allowable limit. **Appeal denied. Decision of the Administrator affirmed.** (6 pp; English)

REFERENCES: nil ■

PAYMENTS RECEIVED

OTHER INDEX TERMS: GARNISHMENT;
UNEMPLOYMENT INSURANCE

File Number: J1205-24

Date of Hearing: June 7, 1991

The Applicant was laid off because of a shortage of work. He applied for unemployment insurance benefits and was advised that he had an outstanding overpayment in the amount of \$1,600. The Unemployment Insurance Commission was recovering the overpayment at a rate of 100 percent.

Because of this rate of recovery, the Applicant did not have any actual income. He applied for assistance and was refused. The Administrator treated the Applicant's gross entitlement to unemployment insurance as income, even though he did not actually receive either the gross or net amounts. Using this assumption, the Applicant's chargeable income was \$1,368.28 monthly and his calculated welfare entitlement was \$1,273. The Applicant was considered ineligible because his income exceeded his budgetary requirements.

The first issue before the Board was whether the Applicant's gross or net unemployment insurance benefits should have been treated as income even though they had been garnisheed at 100 percent. If the Applicant's entire entitlement to Unemployment Insurance were to be treated as income, then the Applicant would be obliged to survive on no money whatsoever. In the Board's view, the income tax deducted from Unemployment Insurance benefits is not income. The province specifically states that income is an allowable deduction under s.13(2)1 of O.Reg 441 and the Board can find no

reason why the income tax deduction should be treated differently in s.13(2)12.

The second issue before the Board was whether the amount of the Applicant's Unemployment Insurance benefits that was garnisheed should be considered as "payments received ... on behalf of" the Applicant.

In the Board's view, the plain meaning of the words "on behalf of" implies that the person who is actually receiving the benefits is doing so for the benefit of the applicant. In this case, the Unemployment Insurance Commission was benefiting from the garnishment, not the Applicant. Therefore, the monies deducted to repay the overpayment were not "payments ... received on behalf of" the Applicant. **Appeal granted. Decision of the Administrator rescinded.** (18 pp; English)

REFERENCES: Income Tax Act; O.Reg. 441, s.13(2)1(i); Re Miller (1976), 71 D.L.R. (3d) 120 (P.E.I.S.C.); Zajac v. Zwarycz (1965), 49 D.L.R. (2d) 52 (Ont.C.A.)■

PENSIONS AND PENSIONERS

OTHER INDEX TERMS: AVAILABLE FINANCIAL RESOURCE; DISCRETION; FAILURE TO PROVIDE INFORMATION

File Number: K0619-07

Date of Hearing: February 12, 1992

The Recipient received assistance as a single person. In February 1989, six

months before her sixty-fifth birthday, the Administrator advised her that she should apply for Old Age Security and Canada Pension Plan benefits. In May 1991 the Administrator closed her file. The Administrator alleged that, because of delays in the application process, the Recipient failed to make reasonable efforts to pursue her old age pension.

The Recipient testified that she began the application procedure but additional documents had been requested and that much of her documentation had been destroyed by a fire in her home. In October 1990 she reported that she had asked a family friend to bring her a duplicate passport from her native land. Because the friend's return was delayed, the passport had not yet arrived by the time of the hearing. The Recipient stated that she had poor vision and little knowledge of English, which made it difficult to understand written communications and what she was expected to provide to both the government and the Administrator. She often relied on people at her church to read things to her.

In the Board's view, there was no doubt that a significant length of time had passed from the time that the Recipient had been advised to apply for her pension and the Administrator's decision to terminate assistance. Moreover, the Recipient's efforts were not the most practical. In the Board's opinion, however, there were extenuating circumstances which the Administrator should take into account. An assessment of the Recipient's position should have indicated to the

GENERAL WELFARE ASSISTANCE ACT

Administrator that active intervention in the process of applying for her pension was warranted. Therefore, the Board concluded that the Administrator was not justified in terminating the Recipient's assistance. (9 pp; English)

REFERENCES: nil■

REFUGEES

OTHER INDEX TERMS: CREDIBILITY;
EXTENSION OF TIME; FRAUD

File Number: K0402-26

Date of Hearing: January 9, 1992

Several months after the Recipient was granted assistance, the Administrator became concerned that the Recipient's immigration documents might not be valid. His cheque was held pending clarification of their validity. After the Administrator had verified that the Recipient had made a refugee claim, his cheque was released and his assistance reinstated.

Shortly afterwards, the Recipient was arrested and charged with a number of offenses relating to the use of different aliases to obtain welfare assistance. After the Administrator learned of the Recipient's arrest, further assistance was withheld.

The Recipient contacted the General Welfare Assistance office on numerous times thereafter. His assistance was not reinstated because he did not provide

sufficient information to establish his identity. The Recipient filed two appeals.

The second appeal was made five months after the decision being appealed. The Board concluded that there were no grounds for extending the time for requesting a hearing on this matter. In the Board's view, there were substantial grounds for concern about the Recipient's immigration status and the Administrator had acted promptly to address those concerns. Second, there were no reasonable grounds for applying for the extension. The Recipient was well aware of the appeal process and, in the Board's view, the second appeal was filed more for the purpose of applying for interim assistance than because of the substantive issue.

The first appeal related to the decision to discontinue assistance after the arrest. In the Board's opinion, it was reasonable in the circumstances to discontinue assistance until the Recipient's identity was clarified. In assessing the Recipient's credibility, the Board took into account the fact that the Recipient had pleaded guilty to charges relating to the use of aliases and that he had been ordered to repay the assistance that he had improperly received. The Board concluded that the Recipient had failed, on a number of occasions, to provide the information which was required to determine his eligibility. **Appeal denied.** (7 pp; English)

REFERENCES: nil■

SELF-EMPLOYED

OTHER INDEX TERMS: CREDIBILITY;
EVIDENCE; JOB SEARCH

File Number: K0819-16

Date of Hearing: February 6, 1992

The Recipient had operated a business for a number of years. At the time of his application for assistance, he provided bank statements, which revealed that the liabilities of the company were in excess of its income. Based on this, he was found to be eligible. The Administrator later cancelled his benefits, claiming that his job search record was inadequate. Pointing to some transactions on the bank statements, the Administrator also claimed that the Recipient was still operating a business and was therefore ineligible as a self-employed person.

The Recipient testified that he had ceased doing business ten months before applying for assistance and that there was no ongoing daily business activity, no clients, and no accounts receivable. He had not, however, gone into bankruptcy, nor had he dissolved his company because he had been able to make arrangements with creditors to satisfy debts. He pointed out that he also used his business account to pay personal bills and that the deposits registered on the statements were his welfare cheques. He testified that he lived in an apartment with his elderly mother, therefore, he continued to maintain a small business office from which he conducted his personal affairs and job search activity. The rent for this space was in arrears.

The Board expressed concern that the Recipient continued to use his business name, despite his claim that the business existed in name only. He submitted that this helped him in his job search efforts since it is easier to obtain new employment when one appears to already have a job.

In the Board's opinion, dictionary definitions of the term "self-employed" suggest that the person must be working in the capacity of owner of the business, and that some of the duties of an owner involve looking for clients, promoting products, and involvements with finances. The oral evidence of the Recipient was credible and consistent, and it was corroborated by the documentary evidence. The Board concluded that the Recipient was not self-employed.

Pertaining to his job search, the Recipient gave evidence that he was a university graduate who had held a number of responsible positions for the ten-year period prior to beginning his own business. He also satisfied the Board that he had expanded his search to include positions not directly related to his past experience. He testified that his efforts occupied one working day per week.

In the Board's opinion, the Administrator's policy of requiring many more contacts was unreasonable and inappropriate in the Recipient's circumstances. The type of position sought and the method of conducting the search should determine the number of contacts that can be reasonably made. The Board concluded that the Recipient's efforts had been

GENERAL WELFARE ASSISTANCE ACT

adequate. **Appeal granted. Decision of the Administrator rescinded.** (11 pp; English)

REFERENCES: O.Reg. 441, s.1(3); "self-employed"■

SELF-EMPLOYED

OTHER INDEX TERMS: LIQUID ASSETS

File Number: K1107-21

Date of Hearing: April 7, 1992

The Applicant was given notice by his employer that his job was ending. After considering his options in view of the recessionary economy, he decided to start up his own business, a marketing firm in an area in which he had expertise. He then applied for General Welfare Assistance. He was denied assistance on the basis that he was self-employed.

A short time later, the Applicant received approval from a government program for a start-up business loan. He subsequently obtained a sales tax number for the business, leased a company car, and purchased a computer and other office equipment.

The Applicant testified that during the day he searched for regular employment but that he worked on his own business for eight to ten hours an evening. This evening work consisted of writing computer programs and gathering information. He compared this work to a hobby.

The Applicant stated that he could not use the money in his business account for personal use. The Board, however, noted that he had paid \$1,600 to the representatives which he had hired across the country. Since the Applicant was spending a considerable amount of time on his business, in the Board's view, he could have drawn some income from his business in lieu of making some of his business purchases.

The purpose and intent of the legislation is to provide a basic living allowance to eligible persons in need. It is not available to, in effect, support the start-up of a business. Although the Board accepted that the Applicant was also looking for other work pending the receipt of income from his business, it was clear that the Applicant's major preoccupation at the time that he applied for assistance was the building of a lucrative business. The Board concluded that the Applicant's primary occupation was self-employment. **Appeal denied. Decision of the Administrator affirmed.** (6 pp; English)

REFERENCES: O.Reg. 441 s.1(3)■

SPONSORSHIP

OTHER INDEX TERMS: CREDIBILITY

File Number: K0325-08

Date of Hearing: November 5, 1991

The Recipient, a 59-year old woman, came to Canada with her son as landed immigrants. The Recipient's daughter

agreed to sponsor them for ten years.

After a one-month period, relationships between family members deteriorated. The Recipient and her son moved out of the daughter's home, without telling the daughter that they were going to do so. When the Recipient's son got a job they found an apartment together. She applied for assistance on the grounds of sponsorship breakdown.

The Administrator later received a telephone call from the Recipient's daughter who expressed surprise that her mother was receiving assistance. She stated that her mother had never asked her for financial assistance and that the Recipient did sewing work and received cash payment for these services. She also stated that she was willing to support her mother and provide her with accommodation. The daughter later confirmed her offer in writing. After receiving this letter, the Administrator cancelled the assistance on the grounds that the Recipient was not making reasonable efforts to realize a financial resource.

The Board concluded that the Recipient had not made reasonable efforts to obtain the support available to her. In the Board's view, the Recipient did not act reasonably in moving out after such a short period of disharmony and without attempting a reconciliation. Moreover, the Recipient left voluntarily and had made alternative arrangements with other relatives to provide for her. There was no evidence that she was forced out of her daughter's home.

In addition, although the daughter did not "offer" financial assistance after the Recipient had moved, the Recipient did not ask for financial assistance, nor did she accept her daughter's invitation to move back into her home. She continued to make no attempt to resolve the ongoing dispute.

The Board also noted that no financial arrangements or agreements between mother and daughter had been made before the immigration to Canada and that the mother had arrived with some money of her own. In the Board's view, it was unreasonable for the Recipient to expect her daughter to pay for her personal expenses.

The Board recognized that the Recipient's circumstances were difficult and that a sponsored immigrant cannot herself enforce the sponsorship agreement because the agreement is between the sponsor and the government of Canada. However, the Board was concerned that the relationship between the Recipient and her daughter ceased only six weeks after her entry into Canada. **Appeal denied. Decision of the Administrator affirmed.** (10 pp; English)

REFERENCES: O.Reg. 441 s.3(3)(b)■

GENERAL WELFARE ASSISTANCE ACT

STUDENTS

OTHER INDEX TERMS: DEPENDENT ADULTS; DISCRETION; ONTARIO STUDENT ASSISTANCE PROGRAM; SPOUSE

File Number: K0721-33

Date of Hearing: January 7, 1992

The Recipient's husband enrolled in a full-time course in a college in another town. Up to the time of enrolment, the Recipient, her husband and children had received assistance as employable persons. He was away at school during the week, returning only on weekends. He received an Ontario Student Assistance Program grant for \$2,690.

The Recipient applied for continued assistance, but asked that she be considered as head of the family and that her husband be left out of the consideration for eligibility. The Administrator denied assistance.

The Recipient's legal representative suggested that the legislation permits a dependent adult to be excluded from the consideration for eligibility but included in the consideration of budgetary need. She based her position on the discretion allowed in the wording of O.Reg. 441 s.3(3)(a), which might permit the exclusion of a dependent adult. She also argued that s.6(3) was an example of where the legislation permits the exclusion of a spouse for computing the amount of assistance. The Board found that the husband was ineligible on a number of grounds. However, the question before the Board was whether

the husband's ineligibility also rendered the entire family ineligible.

In the Board's view, the legislation is founded on certain principles of eligibility, and these principles differ for single persons and for families. Because the factor of a spousal relationship is central to eligibility requirements throughout the legislation, a spouse cannot be separated from the family unit for the purpose of determining eligibility, and included for calculating budgetary need. Moreover, in the Board's view, s.3(3)(a) is not a statement which allows for discretion outside its link to the preceding clause; it relates to the subsections immediately preceding which are named in the clause. Finally, the Board did not accept subsection 6(3) as relevant because the circumstances outlined in the subsection were not those of this case. **Appeal denied. Decision of the Administrator affirmed.** (12 pp; English)

REFERENCES: O.Reg. 441, s.3(3)(a); "dependent adult"■

STUDENTS

OTHER INDEX TERMS: DEPENDENT ADULTS; DISCRETION; ONTARIO STUDENT ASSISTANCE PROGRAM; REFUGEES; SPOUSE

File Number: K0721-32

Date of Hearing: December 5, 1991

The Applicant and her family arrived in Canada as refugees, sponsored by

Immigration and Employment Canada for a one-year period. When financial assistance from the federal government expired, the family began to receive General Welfare Assistance.

The Applicant's husband then decided to upgrade his education in order to improve his employment prospects. He enrolled in a program at a local college. He was given assistance in the amount of \$8,690 from the Ontario Student Assistance Program. General Welfare Assistance for the Applicant and her family was subsequently cancelled.

The first issue before the Board was whether the Applicant's husband was ineligible for assistance. The responsibility for financial support of students and their families in certain educational programs is given to the Ontario Student Assistance Program. General Welfare Assistance is not authorized, nor is it intended to compensate for the inadequacies of this program. Although the Board was of the opinion that the Applicant's husband's efforts to upgrade his education were commendable, it concluded that students and their families in such circumstances are not entitled to welfare assistance. In the Board's opinion, the Applicant's husband may well have been a "person in need" because he was unable to obtain regular employment. However, because he was eligible for O.S.A.P., he was not entitled to receive General Welfare Assistance as a student.

The second issue before the Board was whether the Administrator properly considered the circumstances of the

Applicant when he decided to cancel her assistance because of her husband's situation. The Applicant argued that her husband should not be considered a "dependent adult" who would be obliged to seek employment or obtain approval of his studies. She submitted that a spouse is only a dependent adult where he also meets the other requirements of the definition, that is, living with the head of the family and being dependent on the head of the family. She submitted that she alone was the head of the family and in need, by reason of her inability to obtain employment.

In the Board's view, the legislation clearly indicates that a "dependent adult" is a person who both lives with a head of a family and who is dependent for support on the head of the family. But, separate from this situation, a "dependent adult" also includes a spouse. The legislation does not split family units where the individuals comprising the family unit live together. A definition of "dependent adult" which removed the Applicant's spouse from considerations of eligibility would be inconsistent with the overall scheme and structure of the legislation. The Board concluded that the husband's available income must be considered when determining the eligibility of the family unit.

The Board pointed out that both an applicant and a spouse must satisfy the requirements of the legislation where they are unemployed but employable. In this case, the Applicant satisfied the requirements but her husband did not. This renders the family unit ineligible for

VOCATIONAL REHABILITATION SERVICES ACT

assistance. The only exception is where there are special circumstances which justify the Administrator not exercising discretionary power to refuse assistance. The Board found no such special circumstances in this case. **Appeal denied. Decision of the Administrator affirmed. Appealed to the Divisional Court, file number 166/92.** (13 pp; English)

REFERENCES: O.Reg. 441 s.1(1)(f); Kerr v. The General Manager, Department of Social Services of Metropolitan Toronto (1991), 4 O.R. (3d) 430; "dependent adult" ■

PART III

DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

JURISDICTIONAL ISSUES

OTHER INDEX TERMS: NOTICE REQUIREMENTS

File Number: K0110-15
Date of Hearing: November 14, 1991

The Applicant initially applied for Vocational Rehabilitation Services in 1987. After failed attempts in 1988 to arrange an "employer assessment" as a lab technician, the Applicant participated in a two day "functional capacities assessment" in 1989. This was followed by a four week "work capacities evaluation" which

was never completed.

In September 1990, the Applicant enrolled in college. In November 1990, the Applicant was informed by letter of the Director's intention to suspend services because the Applicant had failed to provide information that was required to determine his eligibility. The letter extended to the Applicant the opportunity to appeal the decision. The Applicant then appealed internally to the local Director and provided the necessary information. The Director found him eligible.

The Applicant informed the supervisor that he had agreed to the provision of services beginning with the 1991 summer semester. However, shortly afterwards he appealed the Director's decision, requesting that funding also be provided for the preceding fall and winter semesters.

The preliminary issue was whether the Board has jurisdiction to rule on the matter. The substantive issue was whether the Applicant was eligible during the fall and winter semesters.

Since the Director did not carry out his intended suspension of services, no notice of suspension was forwarded to the Applicant. Since the Director's intention was never finalized, the Board found that it had no jurisdiction on the matter. According to the legislation, a person is entitled to appeal only a refusal of an application for, or a reduction, suspension, or cancellation of services. Nor can the Director's decision be described as a reduction of services. In

SUMMARIES OF DECISIONS

the Board's view, "reduction of services" cannot be interpreted to cover the effective date of grant being later than that applied for. Rather, these words apply only when there is a decision to decrease existing services. **No jurisdiction.** (8 pp; English)

REFERENCES: Family Benefits Act, s.13, s.14; Vocational Rehabilitation Services Act, s.10(1)■

VOCATIONALLY DISABLED

File Number: K0215-21

Date of Hearing: December 5, 1991

The Applicant asked for help to change her career on the grounds that her occupation as a systems analyst was causing stress leading to disabling alcoholism. The Director refused services on the grounds that the Applicant's disability did not make her vocationally handicapped because she had many computer skills which were transferrable to less stressful jobs.

The Applicant had worked for six years in the computer field and a total of sixteen years in the workforce. She had worked in operations, in the print room, as a programmer and as a systems analyst. She had a diploma and work experience in cartography as well as her background in computers.

The Board focused on the precise wording of subsection 1(b) of the Act, and concluded that the Applicant had an impairment but that the impairment did

not render her incapable of any gainful occupation. In the Board's view, the medical documents submitted did not provide persuasive statements that the Applicant was "incapable" of pursuing "any" occupation. "Any" means work of any kind that is remunerative. Vocational rehabilitation is a preparing of an individual for suitable work, a restoring or renewing of marketable skills through compensatory measures. It is generally thought to be the initiating to work, the satisfying of the impulse to work. It is not considered to be for career changes for individuals who already possess skills which are marketable.

The Board accepted the Applicant's testimony that computer work was stressful for her and that she was not suited to it. However, the Board's view was that, through her job training and work experience the Applicant had developed a varied package of generic skills which were transferable to many other work environments.

The Applicant's legal representative argued that accepting a less stressful job would constitute a step-down in employment and that, according to guideline VR-0303-04, a person who takes a job below their previous capacity is allowed to have assistance to move up in employment. The Board, however, sees a fine distinction in the concept of "step-down" and "move-up" in employment. When an Applicant chooses a less stressful job that produces greater satisfaction and fulfilment, it cannot be considered a "step-down". **Appeal denied. Decision of the Director affirmed.** (13 pp; English)

VOCATIONAL REHABILITATION SERVICES ACT

REFERENCES: Vocational Rehabilitation Services Act, s.1(b); Re: Director of the Vocational Rehabilitation Services Branch of the Ministry of Community and Social Services and Mekler, 27 O.R. (2d) 500;

DeBoni v. Director of Vocational Rehabilitation Services, Div. Ct., May 11, 1978; Vocational Rehabilitation, Guideline VR-0303-04; "vocational rehabilitation"■

CUMULATIVE INDEX

This index includes cases published in Volume 2:1 and Volume 2:2 of
SUMMARIES OF DECISIONS.

PART I: DECISIONS UNDER THE
FAMILY BENEFITS ACT

AGE

K0426-03
Volume 2:2 JUL 1992 p.10

AVAILABLE FINANCIAL RESOURCE

K0717-19
Volume 2:2 JUL 1992 p.13

BENEFICIARIES

K0426-03
Volume 2:2 JUL 1992 p.10
K0805-02
Volume 2:2 JUL 1992 p.11

BOARD AND LODGING

K0422-08
Volume 2:2 JUL 1992 p.5

CO-RESIDENCE

J0816-12
Volume 2:1 APR 1992 p.10
K0919-03
Volume 2:2 JUL 1992 p.12

CREDIBILITY

K0717-19
Volume 2:2 JUL 1992 p.13
K0919-03
Volume 2:2 JUL 1992 p.12

DAMAGES OR COMPENSATION FOR PAIN AND
SUFFERING

J0230-08
Volume 2:2 JUL 1992 p.5
J1108-17
Volume 2:2 JUL 1992 p.9

DEAF PERSONS

J0730-04
Volume 2:1 APR 1992 p.7

DISCRETION

K0129-32
Volume 2:1 APR 1992 p.6
K0501-19
Volume 2:2 JUL 1992 p.7

EDUCATIONAL INSTITUTIONS

K0520-24
Volume 2:2 JUL 1992 p.8

EVIDENCE

J0516-12
Volume 2:2 JUL 1992 p.12
J0920-23
Volume 2:1 APR 1992 p.9

EXTENSION OF TIME

J0827-28
Volume 2:1 APR 1992 p.13
K0520-24
Volume 2:2 JUL 1992 p.8
K0805-02
Volume 2:2 JUL 1992 p.11

FINANCIAL HARDSHIP

K0520-24
Volume 2:2 JUL 1992 p.8

CUMULATIVE INDEX

FUNERALS AND FUNERAL PLANS

K0129-32
Volume 2:1 APR 1992 p.6

HANDICAPPED CHILDREN

K0501-19
Volume 2:2 JUL 1992 p.7
K0825-30
Volume 2:2 JUL 1992 p.7

HOMES, HOSPITALS AND INSTITUTIONS, PATIENT OR RESIDENT IN

H0208-10R
Volume 2:1 APR 1992 p.5
K0129-32
Volume 2:1 APR 1992 p.6

INCOME

J0230-08
Volume 2:2 JUL 1992 p.5
J1108-17
Volume 2:2 JUL 1992 p.9
K0501-19
Volume 2:2 JUL 1992 p.7

INSURANCE

J1108-17
Volume 2:2 JUL 1992 p.9
K0206-16
Volume 2:1 APR 1992 p.8

JURISDICTIONAL ISSUES

J0702-08
Volume 2:1 APR 1992 p.11

LIQUID ASSETS

J0702-08
Volume 2:1 APR 1992 p.11
K0129-32
Volume 2:1 APR 1992 p.6

MEDICAL ADVISORY BOARD

J0918-05
Volume 2:1 APR 1992 p.9

MEDICAL CONDITIONS

J0918-05
Volume 2:1 APR 1992 p.9

MOTHER WITH DEPENDENT CHILDREN

H0208-10R
Volume 2:1 APR 1992 p.5

ONUS

K0919-03
Volume 2:2 JUL 1992 p.12

ONTARIO MOTORIST PROTECTION PLAN

J1108-17
Volume 2:2 JUL 1992 p.9
K0206-16
Volume 2:1 APR 1992 p.8

ORDER IN COUNCIL

J0702-08
Volume 2:1 APR 1992 p.11
K0825-30
Volume 2:2 JUL 1992 p.7

OVERPAYMENTS

J0730-04
Volume 2:1 APR 1992 p.7
K0129-32
Volume 2:1 APR 1992 p.6
K0426-03
Volume 2:2 JUL 1992 p.10
K0805-02
Volume 2:2 JUL 1992 p.11

PAYMENTS RECEIVED

J0730-04
Volume 2:1 APR 1992 p.7
J1108-17
Volume 2:2 JUL 1992 p.9
K0206-16
Volume 2:1 APR 1992 p.8

PERMANENTLY UNEMPLOYABLE PERSON

J0516-12
Volume 2:2 JUL 1992 p.12
J0918-05
Volume 2:1 APR 1992 p.9
J0920-23
Volume 2:1 APR 1992 p.9

PUTATIVE FATHER

K0717-19
Volume 2:2 JUL 1992 p.13

SUMMARIES OF DECISIONS

RECONSIDERATIONS

H0208-10R
Volume 2:1 APR 1992 p.5

REFUGEES

K0426-03
Volume 2:2 JUL 1992 p.10

RENT

K0422-08
Volume 2:2 JUL 1992 p.5

SINGLE PARENT WITH DEPENDENT CHILDREN

K0520-24
Volume 2:2 JUL 1992 p.8

SPOUSE

J0816-12
Volume 2:1 APR 1992 p.10
K0919-03
Volume 2:2 JUL 1992 p.12

STRUCTURED SETTLEMENTS

J0230-08
Volume 2:2 JUL 1992 p.5

SUPPORT OR MAINTENANCE PAYMENTS

K0717-19
Volume 2:2 JUL 1992 p. 13

TRUSTS

J0702-08
Volume 2:1 APR 1992 p.11
J0827-28
Volume 2:1 APR 1992 p.13

ASSIGNMENT

K0404-05
Volume 2:2 JUL 1992 p.16

AVAILABLE FINANCIAL RESOURCE

K0619-07
Volume 2:2 JUL 1992 p.19

CASUAL GIFTS

K0208-02
Volume 2:1 APR 1992 p.15
K0604-16
Volume 2:1 APR 1992 p.16

CONCURRING OPINIONS

J0214-23
Volume 2:1 APR 1992 p.25

CREDIBILITY

J1010-20
Volume 2:1 APR 1992 p.29
J1017-03
Volume 2:1 APR 1992 p.30
K0325-08
Volume 2:2 JUL 1992 p.22
K0402-26
Volume 2:2 JUL 1992 p.20
K0819-16
Volume 2:2 JUL 1992 p.21

DEPENDENT ADULTS

J0822-15
Volume 2:1 APR 1992 p.26
K0721-32
Volume 2:2 JUL 1992 p.24
K0721-33
Volume 2:2 JUL 1992 p.24

DEPENDENT CHILD

J1127-27
Volume 2:1 APR 1992 p.17

DISCRETION

J0822-15
Volume 2:1 APR 1992 p.26
J1205-16
Volume 2:1 APR 1992 p.28
K0208-02
Volume 2:1 APR 1992 p.15

PART II: DECISIONS UNDER THE
GENERAL WELFARE ASSISTANCE ACT

AGE

J1206-13
Volume 2:1 APR 1992 p.14

APPLICATIONS

J1206-13
Volume 2:1 APR 1992 p.14

CUMULATIVE INDEX

DISCRETION, cont'd

K0619-07
Volume 2:2 JUL 1992 p.19
K0721-32
Volume 2:2 JUL 1992 p.24
K0721-33
Volume 2:2 JUL 1992 p.24

DRUG BENEFITS

K0130-03
Volume 2:1 APR 1992 p.24

EMPLOYABLE PERSON

J0920-06
Volume 2:1 APR 1992 p.18
J1112-12
Volume 2:1 APR 1992 p.19

EVIDENCE

K0116-13
Volume 2:2 JUL 1992 p.15
K0819-16
Volume 2:2 JUL 1992 p.21

EXTENSION OF TIME

K0402-26
Volume 2:2 JUL 1992 p.20

FAILURE TO PROVIDE INFORMATION

K0116-13
Volume 2:2 JUL 1992 p.15
K0619-07
Volume 2:2 JUL 1992 p.19

FARMS AND FARMERS

K0506-02
Volume 2:2 JUL 1992 p.17

FOSTER PARENTS AND CHILDREN

J1127-27
Volume 2:1 APR 1992 p.17

FRAUD

K0402-26
Volume 2:2 JUL 1992 p.20

GARNISHMENT

J1205-21
Volume 2:1 APR 1992 p.21

J1205-24
Volume 2:2 JUL 1992 p.18
J1227-12
Volume 2:1 APR 1992 p.22

HEAD OF A FAMILY

J0214-23
Volume 2:1 APR 1992 p.25

INCOME

J1205-21
Volume 2:1 APR 1992 p.21
J1227-12
Volume 2:1 APR 1992 p.22
K0130-03
Volume 2:1 APR 1992 p.24
K0208-02
Volume 2:1 APR 1992 p.15
K0604-16
Volume 2:1 APR 1992 p.16
K1006-17
Volume 2:2 JUL 1992 p.14

JOB SEARCH

J0920-06
Volume 2:1 APR 1992 p.18
J1112-12
Volume 2:1 APR 1992 p.19
K0819-16
Volume 2:2 JUL 1992 p.21

JURISDICTIONAL ISSUES

J0106-11
Volume 2:1 APR 1992 p.25
K0110-15
Volume 2:2 JUL 1992 p.26

LIQUID ASSETS

J0610-19
Volume 2:1 APR 1992 p.21
J0528-13
Volume 2:1 APR 1992 p.20
K0116-13
Volume 2:2 JUL 1992 p.15
K0404-05
Volume 2:2 JUL 1992 p.16
K0506-02
Volume 2:2 JUL 1992 p.17
K1107-21
Volume 2:2 JUL 1992 p.22

SUMMARIES OF DECISIONS

NATIVE PEOPLE

J0528-13

Volume 2:1 APR 1992 p.20

NOTICE REQUIREMENTS

K0110-15

Volume 2:2 JUL 1992 p.26

ONTARIO STUDENT ASSISTANCE PROGRAM

J0822-15

Volume 2:1 APR 1992 p.26

K0721-32

Volume 2:2 JUL 1992 p.24

K0721-33

Volume 2:2 JUL 1992 p.24

PARTNERSHIPS

K0116-13

Volume 2:2 JUL 1992 p.15

PAYMENTS RECEIVED

J1205-21

Volume 2:1 APR 1992 p.21

J1205-24

Volume 2:2 JUL 1992 p.18

J1227-12

Volume 2:1 APR 1992 p.22

K0130-03

Volume 2:1 APR 1992 p.24

K0208-02

Volume 2:1 APR 1992 p.15

K0604-16

Volume 2:1 APR 1992 p.16

K1006-17

Volume 2:2 JUL 1992 p.14

PENSIONS AND PENSIONERS

K0619-07

Volume 2:2 JUL 1992 p.19

REFUGEES

K0402-26

Volume 2:2 JUL 1992 p.20

K0721-32

Volume 2:2 JUL 1992 p.24

RESIDENCE

J1205-16

Volume 2:1 APR 1992 p.28

SELF-EMPLOYED

K0819-16

Volume 2:2 JUL 1992 p.21

K1107-21

Volume 2:2 JUL 1992 p.22

SHELTER

K0130-03

Volume 2:1 APR 1992 p.24

SPECIAL CIRCUMSTANCES

J1206-13

Volume 2:1 APR 1992 p.14

SPONSORSHIP

K0325-08

Volume 2:2 JUL 1992 p.22

SPOUSE

J0214-23

Volume 2:1 APR 1992 p.25

K0721-32

Volume 2:2 JUL 1992 p.24

K0721-33

Volume 2:2 JUL 1992 p.24

STUDENTS

J0106-11

Volume 2:1 APR 1992 p.25

J0822-15

Volume 2:1 APR 1992 p.26

J1128-06

Volume 2:1 APR 1992 p.27

J1205-16

Volume 2:1 APR 1992 p.28

K0721-32

Volume 2:2 JUL 1992 p.24

K0721-33

Volume 2:2 JUL 1992 p.24

SUPPORT OR MAINTENANCE PAYMENTS

J1205-21

Volume 2:1 APR 1992 p.21

J1227-12

Volume 2:1 APR 1992 p.22

TAXES

K1006-17

Volume 2:2 JUL 1992 p.14

CUMULATIVE INDEX

UNEMPLOYMENT DUE TO CIRCUMSTANCES NOT WITHIN CONTROL

J0920-06
Volume 2:1 APR 1992 p.18
J1010-20
Volume 2:1 APR 1992 p.29
J1017-03
Volume 2:1 APR 1992 p.30
J1128-06
Volume 2:1 APR 1992 p.27

UNEMPLOYMENT INSURANCE

J1205-21
Volume 2:1 APR 1992 p.21
J1205-24
Volume 2:2 JUL 1992 p.18
J1227-12
Volume 2:1 APR 1992 p.22
K1006-17
Volume 2:2 JUL 1992 p.14

PART III: DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

BENEFITING FROM SERVICES

J0117-17
Volume 2:1 APR 1992 p.31
J0621-15
Volume 2:1 APR 1992 p.35

DISCRETION

G1006-18R
Volume 2:1 APR 1992 p.32
K0227-26
Volume 2:1 APR 1992 p.32

EDUCATIONAL PROGRAMS

K0227-26
Volume 2:1 APR 1992 p.32

FAILURE TO PROVIDE INFORMATION

J0820-10
Volume 2:1 APR 1992 p.34

JURISDICTIONAL ISSUES

K0110-15
Volume 2:2 JUL 1992 p.26

LEARNING DISABLED

K0227-26
Volume 2:1 APR 1992 p.32

NOTICE REQUIREMENTS

K0110-15
Volume 2:2 JUL 1992 p.26

RECONSIDERATIONS

G1006-18R
Volume 2:1 APR 1992 p.32

SATISFACTORY PROGRESS

J0820-10
Volume 2:1 APR 1992 p.34
J0621-15
Volume 2:1 APR 1992 p.35

VOCATIONALLY DISABLED

J0820-10
Volume 2:1 APR 1992 p.34
K0215-21
Volume 2:2 JUL 1992 p.27

REFERENCES TO STATUTES AND REGULATIONS

Child and Family Services Act

s.14(i) and (ii)
J1127-27
Volume 2:1 APR 1992 p.17

Family Benefits Act, R.S.O. 1980, c.151
s.1(1)

K0805-02
Volume 2:2 JUL 1992 p.11

s.1(c)
K0805-02
Volume 2:2 JUL 1992 p.11

s.1(f)(i)
K0520-24
Volume 2:2 JUL 1992 p.8

s.13
K0110-15
Volume 2:2 JUL 1992 p.26

s.14
K0110-15
Volume 2:2 JUL 1992 p.26

SUMMARIES OF DECISIONS

Family Benefits Act, cont'd

| | | | |
|------|------------|----------|------|
| s.17 | | | |
| | J0730-04 | | |
| | Volume 2:1 | APR 1992 | p.7 |
| | K0426-03 | | |
| | Volume 2:2 | JUL 1992 | p.10 |
| | K0805-02 | | |
| | Volume 2:2 | APR 1992 | p.11 |

General Welfare Assistance Act, R.S.O. 1980, c.188

| | | | |
|------------|------------|----------|------|
| s.10(2)(c) | | | |
| | K0208-02 | | |
| | Volume 2:1 | APR 1992 | p.15 |

Income Tax Act

| | | | |
|--|------------|----------|------|
| | J1205-24 | | |
| | Volume 2:2 | JUL 1992 | p.18 |

Indian Act

| | | | |
|--|------------|----------|------|
| | J0528-13 | | |
| | Volume 2:1 | APR 1992 | p.20 |

Insurance Act, No-Fault Benefit Schedule

| | | | |
|---------|------------|----------|-----|
| s.13(1) | | | |
| | J1108-17 | | |
| | Volume 2:2 | JUL 1992 | p.9 |
| s.13(4) | | | |
| | J1108-17 | | |
| | Volume 2:2 | JUL 1992 | p.9 |

Ontario Regulation 318, R.R.O. 1980

| | | | |
|-----------------|------------|----------|------|
| s.1(1)(aa) | | | |
| | J0702-08 | | |
| | Volume 2:1 | APR 1992 | p.11 |
| | J0827-28 | | |
| | Volume 2:1 | APR 1992 | p.13 |
| s.1(1)(aa)(vii) | | | |
| | K0129-32 | | |
| | Volume 2:1 | APR 1992 | p.6 |
| s.1(1b) | | | |
| | K0919-03 | | |
| | Volume 2:2 | JUL 1992 | p.12 |
| s.1(2) | | | |
| | K0520-24 | | |
| | Volume 2:2 | JUL 1992 | p.8 |

| | | | |
|------------|------------|----------|------|
| s.1(1)(d) | | | |
| | J0816-12 | | |
| | Volume 2:1 | APR 1992 | p.10 |
| s.3(2)(a) | | | |
| | J0702-08 | | |
| | Volume 2:1 | APR 1992 | p.11 |
| s.5(a)(i) | | | |
| | H0208-10R | | |
| | Volume 2:1 | APR 1992 | p.5 |
| s.8 | | | |
| | J0827-28 | | |
| | Volume 2:1 | APR 1992 | p.13 |
| s.13(1) | | | |
| | J0730-04 | | |
| | Volume 2:1 | APR 1992 | p.7 |
| | J1108-17 | | |
| | Volume 2:2 | JUL 1992 | p.9 |
| | K0206-16 | | |
| | Volume 2:1 | APR 1992 | p.8 |
| s.13(2) | | | |
| | J0730-04 | | |
| | Volume 2:1 | APR 1992 | p.7 |
| s.13(2)41 | | | |
| | J0230-08 | | |
| | Volume 2:2 | JUL 1992 | p.5 |
| | J1108-17 | | |
| | Volume 2:2 | JUL 1992 | p.9 |
| s.14(3) | | | |
| | J0702-08 | | |
| | Volume 2:1 | APR 1992 | p.11 |
| s.16(3) | | | |
| | K0129-32 | | |
| | Volume 2:1 | APR 1992 | p.6 |
| s.30(4) | | | |
| | K0422-08 | | |
| | Volume 2:2 | JUL 1992 | p.5 |
| s.30(5) | | | |
| | K0422-08 | | |
| | Volume 2:2 | JUL 1992 | p.5 |
| s.30(5a) | | | |
| | K0422-08 | | |
| | Volume 2:2 | JUL 1992 | p.5 |
| s.38 | | | |
| | K0825-30 | | |
| | Volume 2:2 | JUL 1992 | p.7 |
| s.38(2) | | | |
| | K0501-19 | | |
| | Volume 2:2 | JUL 1992 | p.7 |
| s.38(3)(d) | | | |
| | Volume 2:2 | JUL 1992 | p.7 |

CUMULATIVE INDEX

Ontario Regulation 441, R.R.O. 1980

| | | | | |
|---------------|----------|------------|----------|------|
| s.1(1)(f) | K0721-32 | Volume 2:2 | JUL 1992 | p.24 |
| s.1(1)(i) | J0214-23 | Volume 2:1 | APR 1992 | p.25 |
| s.1(1)(k) | J0528-13 | Volume 2:1 | APR 1992 | p.20 |
| | J0610-19 | Volume 2:1 | APR 1992 | p.21 |
| s.1(2)(b) | J0214-23 | Volume 2:1 | APR 1992 | p.25 |
| s.1(3) | K0819-16 | Volume 2:2 | JUL 1992 | p.22 |
| | K1107-21 | Volume 2:2 | JUL 1992 | p. |
| s.3(1)(b)(ii) | J1112-12 | Volume 2:1 | APR 1992 | p.19 |
| s.3(3) | J1128-06 | Volume 2:1 | APR 1992 | p.27 |
| s.3(3)(a) | K0721-33 | Volume 2:2 | JUL 1992 | p.24 |
| s.3(3)(b) | J0528-13 | Volume 2:1 | APR 1992 | p.20 |
| | K0325-08 | Volume 2:2 | JUL 1992 | p.22 |
| s.5(1) | K0404-05 | Volume 2:2 | JUL 1992 | p.16 |
| s.6(1) | J1128-06 | Volume 2:1 | APR 1992 | p.27 |
| | J1205-16 | Volume 2:1 | APR 1992 | p.28 |
| s.6(1)(a) | J0106-11 | Volume 2:1 | APR 1992 | p.25 |
| s.6(1)(c) | J0822-15 | Volume 2:1 | APR 1992 | p.26 |

| | | | | |
|-------------|----------|------------|----------|------|
| s.6(2) | J0822-15 | Volume 2:1 | APR 1992 | p.26 |
| | J1205-16 | Volume 2:1 | APR 1992 | p.28 |
| s.10(1) | J0106-11 | Volume 2:1 | APR 1992 | p.25 |
| s.11(2a) | K0130-03 | Volume 2:1 | APR 1992 | p.24 |
| s.13(1) | J1227-12 | Volume 2:1 | APR 1992 | p.22 |
| | K0130-03 | Volume 2:1 | APR 1992 | p.24 |
| | K1006-17 | Volume 2:2 | JUL 1992 | p.14 |
| s.13(1)(a) | K0208-02 | Volume 2:1 | APR 1992 | p.15 |
| s.13(2) | K1006-17 | Volume 2:2 | JUL 1992 | p.14 |
| s.13(2)1(i) | J1205-24 | Volume 2:2 | JUL 1992 | p.18 |
| s.13(2)11c | K0130-03 | Volume 2:1 | APR 1992 | p.24 |
| s.13(2)12 | J1205-21 | Volume 2:1 | APR 1992 | p.21 |
| | J1227-12 | Volume 2:1 | APR 1992 | p.22 |
| s.13(2)21 | K0604-16 | Volume 2:1 | APR 1992 | p.16 |
| s.13(7) | K1006-17 | Volume 2:2 | JUL 1992 | p.14 |

Ontario Regulation 943, R.R.O. 1980

| | | | | |
|-----------|----------|------------|----------|------|
| s.1(2)(a) | K0227-26 | Volume 2:1 | APR 1992 | p.32 |
| s.1(2)(f) | K0227-26 | Volume 2:1 | APR 1992 | p.32 |

CUMULATIVE INDEX

Vocational Rehabilitation Services Act, R.S.O 1980, c.525

| | | | |
|---------|--|----------|------------------------------|
| s.1(b) | J0117-17 Volume 2:1 | APR 1992 | p.31 |
| | K0215-21 Volume 2:2 | JUL 1992 | p.27 |
| s.6 | G1006-18R Volume 2:1 | APR 1992 | p.32 |
| s.9(a) | J0117-17 Volume 2:1 | APR 1992 | p.31 |
| s.9(b) | J0117-17 Volume 2:1 | APR 1992 | p.31 |
| s.9(c) | J0117-17 Volume 2:1 J0621-15 Volume 2:1 J0820-10 Volume 2:1 | APR 1992 | p.31 p.31 p.35 p.34 |
| s.9(d) | J0621-15 Volume 2:1 J0820-10 Volume 2:1 | APR 1992 | p.35 p.34 |
| s.9(e) | J0820-10 Volume 2:1 | APR 1992 | p.34 |
| s.10(1) | K0110-15 Volume 2:2 | JUL 1992 | p.26 |

REFERENCES TO MANUALS

Family Benefits Policy and Procedural Guidelines Manual

| | | | |
|-----------|------------------------|----------|-----|
| Index #12 | K0129-32 Volume 2:1 | APR 1992 | p.6 |
| Index #17 | J0230-08 Volume 2:2 | JUL 1992 | p.5 |

| | | | |
|----------------------------|--|----------|--------------|
| Index #53 s.4.0 | K0422-08 Volume 2:2 | JUL 1992 | p.5 |
| Index #64 | K0426-03 Volume 2:2 K0805-02 Volume 2:2 | JUL 1992 | p.10 p.11 |
| Index #76, Parental Relief | K0825-30 Volume 2:2 | JUL 1992 | p.7 |
| Index #76, Appendix 1 | K0501-19 Volume 2:2 | JUL 1992 | p.7 |

General Welfare Policy Guidelines

| | | | |
|------------|------------------------|----------|------|
| GW-0303-03 | J1112-12 Volume 2:1 | APR 1992 | p.19 |
| GW-0304-02 | J0106-11 Volume 2:1 | APR 1992 | p.25 |

Vocational Rehabilitation

| | | | |
|------------|------------------------|----------|------|
| VR-0303-04 | K0215-21 Volume 2:2 | JUL 1992 | p.27 |
|------------|------------------------|----------|------|

DEFINITIONS

| | | | |
|-------------------|--|----------|--------------|
| "absent" | J0214-23 Volume 2:1 | APR 1992 | p.25 |
| "beneficiary" | K0805-02 Volume 2:2 | JUL 1992 | p.11 |
| "dependent adult" | K0721-32 Volume 2:2 K0721-33 Volume 2:2 | JUL 1992 | p.24 p.24 |
| "foster child" | J1127-27 Volume 2:1 | APR 1992 | p.17 |

CUMULATIVE INDEX

"incur"

J1108-17

Volume 2:2 JUL 1992 p.9

"on behalf of"

J1205-21

Volume 2:1 APR 1992 p.21

J1227-12

Volume 2:1 APR 1992 p.22

"payment"

K0604-16

Volume 2:1 APR 1992 p.16

"principal residence"

K0116-13

Volume 2:2 JUL 1992 p.15

"reasonable"

J0920-06

Volume 2:1 APR 1992 p.18

"recipient"

K0426-03

Volume 2:2 JUL 1992 p.10

K0805-02

Volume 2:2 JUL 1992 p.11

"self-employed"

K0819-16

Volume 2:2 JUL 1992 p.21

"vocational rehabilitation"

K0215-21

Volume 2:2 JUL 1992 p.27

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SOCIAL ASSISTANCE REVIEW BOARD

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Volume 2, Number 3

October 1992



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ORGANIZATION

This publication is divided into three parts. Part I contains summaries of decisions that relate to the Family Benefits Act. Part II contains summaries of decisions relating to the General Welfare Assistance Act, and Part III contains summaries of decisions relating to the Vocational Rehabilitation Services Act.

Each decision summarized in this publication is assigned a number of different index terms which reflect its content. The summaries appear under the one heading which best expresses the most noteworthy issue under discussion in each decision. This heading is in **BOLD** type at the beginning of each summary. These headings are arranged in alphabetical order within Part I, Part II, and Part III.

Other index terms which apply to a decision are listed separately to provide a further indicator of content.

Example:

CATEGORICAL ELIGIBILITY

OTHER INDEX TERMS: JOINT CUSTODY; RECONSIDERATIONS;
SINGLE PARENT WITH DEPENDENT CHILDREN

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THE SUMMARIES

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The disposition of the case, the number of pages in the full-text version of the decision, and the language in which the decision was written appear as the last sentence in the summary. Certain decisions have both an English and French language version available.

Example:

Appeal denied. (16 pp English; or 18 pp French)

REFERENCES

These references are to documents and authorities considered in and commented on in some detail by the Board in its findings. They are further indicators of the relevance of the decision. The list may include, in this order: federal and provincial statutes, regulations, cases, books, treatises and manuals. Terms whose meanings are discussed in a significant way appear in quotation marks at the end of the list.

Example:

General Welfare Assistance Act s.7(1); Re Richardson and the Commissioner of Metropolitan Toronto Department of Social Services (1988), 46 O.R. (2d) 63; "reside"

CUMULATIVE INDEX

A cumulative index to this publication is included with each issue. Use it to find summaries of decisions on specific subjects of interest to you.

References to summaries in the current issue are integrated with references from preceding issues in this list. Therefore, the most recent index can also be used to find decisions summarized in previous issues. KEEP YOUR BACK ISSUES FOR FUTURE REFERENCE. At the beginning of each year we will begin a new index.

The cumulative index is divided into the same three parts as the rest of the publication. Part I of the index refers to the Family Benefits Act. Part II refers to the General Welfare Assistance Act, and Part III to the Vocational Rehabilitation Services Act.

The index is arranged in alphabetical order by subject within each of the Parts. Each decision appears under several different index terms to provide a detailed guide to its content. Note that headings are of many different types. Factual, procedural, and conceptual terms are used and the names of statutes or programs may also appear as index terms.

Example:

| | |
|--|--------------|
| DRUG BENEFIT | (factual) |
| EXTENSION OF TIME | (procedural) |
| ONUS | (conceptual) |
| <u>CANADIAN CHARTER OF RIGHTS AND FREEDOMS</u> | (statute) |
| S.T.E.P. | (program) |

HOW TO USE THIS PUBLICATION

The left hand side of each index page shows the index terms and the File Numbers of all of the decisions which contain information on these subjects.

Example:

EXTENSION OF TIME
H0321-05

Information on the right hand side of each index page shows where the summaries of decisions on any given topic originally appeared in our publication. Details about page number, issue number, and issue date are provided.

PART I

DECISIONS UNDER THE
FAMILY BENEFITS ACT

SUBJECT: ABSENT FROM ONTARIO

File Number: K0825-45

Date of Hearing: March 31, 1992

The Recipient received an allowance as a permanently unemployable person. She left the province of Ontario for a three-month period, to visit her sister in another part of the country. She did not tell her field worker how long she would be away because she did not know. During her absence, she continued to pay her rent and bills in Ontario and always intended to return to her home in Ontario.

The Director, under the authority of s.12(b) of the Act, reduced her allowance for the period of her absence and established an overpayment because she was absent from the province. An explanation of the amount of the overpayment indicated that the Recipient had been allowed her accommodation costs and her medical expenses and that the remaining overpayment was being recovered from her monthly entitlement.

The Board concluded that neither s.12(b)

nor Index #45 of the guidelines permits a reduction of benefits. Both allow only suspension or cancellation. The creation of an overpayment and a reduction to that overpayment created, in effect, a partial entitlement or partial reduction of the allowance. In the Board's view, there were no grounds to reduce the Recipient's entitlement. **Appeal granted. Decision of the Director rescinded.** (6 pp; English)

REFERENCES: Family Benefits Act s.12(b); Policy and Procedural Guidelines, Index #45■

SUBJECT: HOMES, HOSPITALS, AND INSTITUTIONS, PATIENT OR RESIDENT IN

OTHER INDEX TERMS: DISCRETION; EXTENSION OF TIME; SHELTER

File Number: K0923-31

Date of Hearing: March 18, 1992

The Recipient, aged 27, was a disabled person who had an intellectual handicap combined with emotional and behavioural difficulties. She was hospitalized for psychiatric assessment and treatment. The Director reduced her allowance from \$747 per month to a personal needs allowance of \$100 per month.

For a number of years the Recipient had been a resident in a group home of the local association for community living. The director of that association launched the appeal on the Recipient's behalf, to

FAMILY BENEFITS ACT

support the retention of her accommodation in the community.

A preliminary issue in this appeal was whether the Recipient's representative had a right to appeal on her behalf. While there was no evidence before the Board that the representative would act in a way that was contrary to the Recipient's interests, the Board was reluctant to proceed with an appeal when the Recipient was not aware of it. The representative stated that, in his opinion, the Recipient was not able to give informed consent to the appeal. While she had not been deemed legally incompetent, her father was routinely approached for consent for decisions such as agreement for medical procedures and trips. The father, who had been fully informed of the issues in this appeal, supported the action on his daughter's behalf and had given his written consent. The Board concluded that the representative had a right to represent the Recipient.

Since the appeal was launched nine months after the benefits had been reduced, a further preliminary issue was whether an extension of time should be granted. The Recipient received her personal needs allowance directly in the hospital and the housing agency itself did not receive any money from Family Benefits. After the allowance was reduced, the financial hardship on the agency grew until there was no money to help with the cost of holding her room for her upon her discharge from hospital.

The Recipient's representative testified that he did not receive notice of the

decision to reduce the allowance. Moreover, no information about the right to appeal reached him and he did not realize that he could appeal the decision. Finally, he had not expected the Recipient to be hospitalized for such a long period. The Board granted the extension of time.

The substantive issue before the Board was whether the allowance had been appropriately varied. At the time of the hearing, the agency had had to maintain the Recipient's place in the group home for more than a year. The Director's spokesperson acknowledged that while this was unfortunate, the purpose of Family Benefits was to assist people in need and the Recipient's needs in this case were being met by the institution where she was a patient.

After reviewing the appropriate policy guideline and the legislation, the Board concluded that the Director had granted only the minimum three months required by law. He had not exercised the discretion available to him and specifically provided for in the policy guidelines to grant the amount for basic shelter for a longer period of time. In the Board's view, the length of stay in hospital and the difficulty of placing the Recipient in other accommodation warranted the exercise of discretion to provide assistance that would keep the community housing for a longer period. **Appeal granted in part. Decision of the Director rescinded in part.** (13 pp; English)

REFERENCES: O.Reg. 318 s.16(2); Policy and Procedural Guidelines, Index #44■

SUBJECT: OVERPAYMENTS

OTHER INDEX TERMS: ASSIGNMENT;
CANADA PENSION PLAN; DISCRETION;
EVIDENCE; PAYMENTS RECEIVED

File Number: J0104-16

Date of Hearing: May 1, 1991

The Recipient received an allowance as a disabled person with one dependent child. He later received a retroactive, lump sum Canada Pension Plan disability award. As a result, the Director declared an overpayment and began to recover it.

The calculation of the overpayment was not disputed by the Recipient; however, he had consulted four employees of the Director's office before cashing his cheque and it was his understanding that the money was his to spend. He submitted that the Director had made an administrative error and should not recover the overpayment.

After receiving his award, the Recipient's lawyer cautioned him that he might have to repay the amount and urged him to make enquiries at the Director's office. The Board accepted the Recipient's evidence about the series of enquiries that resulted; however, the Board noted that the replies given to the Recipient all indicated that he did not have to repay the money "at that time". The Board found that, from the date of his application for an allowance and throughout the period in question, the Recipient knew that he might have to pay Family Benefits part of any award he received.

The Recipient's lawyer also argued that the Director did not follow his own policy, in that the Recipient was not given an opportunity to sign an assignment form. The Board noted that the legislation does not require that a Recipient be offered this choice and found that this did not result in an improper exercise of discretion.

The Recipient's lawyer, relying on cases from other provinces, submitted that the Director's authority to recover benefits is limited to situations where the recipient is not entitled to it at the time of the payment of the benefit.

The Board determined that, in this case, at the time the Recipient's allowance was paid, it was paid properly and that the Recipient subsequently became not entitled to the allowance. The Board did not accept the argument that the relevant time period to determine entitlement is the time when an allowance is received.
Appeal denied. Decision of the Director affirmed. (15 pp; English)

REFERENCES: Family Benefits Act, s.17; O.Reg. 318 s.13(7), s.13(8); Dorothy Giroux v. Department of Social Services (unreported case; Nova Scotia Supreme Court Trial Division, July 8, 1991); Re Crystal and Crystal (1972), 32 D.L.R. (3d) 116; Re Harris and Ministry of Community and Social Services (1975), 8 O.R. (2d) 721■

FAMILY BENEFITS ACT

SUBJECT: PAYMENTS RECEIVED

OTHER INDEX TERMS: DISCRETION;
LIQUID ASSETS; MORTGAGES;
OVERPAYMENTS; PENSIONS AND
PENSIONERS

File Number: K0829-04

Date of Hearing: March 17, 1992

The Recipient was a 57-year old, sole-support parent with one dependent child. She applied for a pension from her homeland in 1988, with little expectation of receiving it. In August 1991, without previous notice, she received a retroactive pension cheque in the amount of \$11,270, covering a nine-month period. When she contacted the Family Benefits authorities, she was advised to forward the cheque to the Ministry as she had been in Receipt of an allowance during the effective period of the pension payment. The Recipient, on the advice of her alderman who was also her representative in this matter, decided to not reimburse the Ministry for this amount.

The Director cancelled the Recipient's allowance on the grounds that her assets were in excess of the allowable limit and assessed an overpayment in the amount of \$11,270, because she had elected to not repay that amount. The Recipient later disposed of some of the money by paying off the mortgage on her home. She argued that the overpayment should not include the amount spent to pay off her mortgage. This would result in a long-term saving to the taxpayer, since once her mortgage was paid off she would no

longer require a shelter allowance. A later Client Information Update Report established that the Recipient's total asset level was, in fact, less than the allowable limit and her benefits were reinstated.

There were several questions before the Board. First, should the retroactive pension payment be considered income and was it recoverable as an overpayment? Secondly, was the allowance properly cancelled because the Recipient had assets in excess of the allowable amount? Thirdly, was the overpayment properly collectible in the month intended as opposed to the month received? Lastly, should the calculation of the overpayment take into account asset reduction such as the satisfaction of the mortgage debt?

The Board questioned whether the Director had properly applied s.13(7). This subsection seems to allow the Director a choice of methods to deal with retroactive lump sum payments like the pension in question. The Director may either consider the payment as income in the months intended or as income in the month received, but not both. In this case the Director cancelled the Recipient's benefits for several months after receiving the pension because she had assets in excess of allowable limits. The lump sum payment was therefore treated as income in the month received. However, after the Recipient had reduced the asset by paying off her mortgage, the Director also required her to reimburse an overpayment incurred because she received benefits during the effective period of the pension which meant that the same lump sum was

also treated as income in the month intended. In the Board's view, the Director has the discretion to implement one of these options, but not both.

The Board found that the Director properly cancelled the Recipient's allowance for the period up to the time when she reduced her assets. However, in the Board's view, it was improper for the Director to also impose an overpayment against the Recipient. Having already treated the lump sum as income in the month received, it was unreasonable to penalize her again by making her pay back the amount of the pension received. Therefore, an overpayment should not be recovered. **Appeal denied in part. Decision of the Director affirmed in part.** (15 pp; English)

REFERENCES: O.Reg. 318 s.13(7)■

SUBJECT: SHELTER

OTHER INDEX TERMS: PERMANENTLY UNEMPLOYABLE PERSON; RENTALS

File Number: K0912-10

Date of Hearing: April 29, 1992

The Recipient and his spouse were both permanently unemployable persons. They both suffered physical disabilities and required help with household chores. Because they felt more comfortable having a family member living with them to help them, they asked a close relative to live with them in the role of caregiver.

The legislation provides that an exemption may be granted from charges if the renter, roomer, or boarder is a caregiver whose services allow a recipient to function in the community.

The Recipient and his spouse often had bad days when getting out of bed was difficult. They required help to do laundry and often found it difficult to cook a meal. The Recipient, who had problems with his legs, sometimes fell and required help to get up again, but his spouse was unable to help him. He sometimes fell at night and would have to wait until morning for help to get up. They could not do any outside work.

The Board found that the couple required "physical assistance". In the Board's view, the Director interpreted this term in its narrowest sense, meaning simply help with personal needs. Moreover, the Director's suggestion of homemaker services, provided at the cost of additional tax dollars, would provide only limited help within specified hours during the day. In a letter, their doctor stated that their disability was "significant" and that they required live-in help. The Board noted that he recommended "live-in" help, not homemaker services. In the Board's opinion, having a relative live with them as caregiver was a practical, cost-effective suggestion, and concluded that the couple qualified for exemption from the charge. **Appeal granted. Decision of the Director rescinded.** (6 pp; English)

REFERENCES: O.Reg. 318 s.41(1), s.41(4)(a); "physical assistance"■

FAMILY BENEFITS ACT

SUBJECT: SPOUSE

OTHER INDEX TERMS: CREDIBILITY;
EVIDENCE; ONUS

File Number: J0920-14

Date of Hearing: February 20, 1992

The Recipient received an allowance as a single parent. Following an investigation, the Director suspended her benefits because she was not living as a single person, but with A.

The interrelationships among the Recipient, her extended family, and A. were complex. For example, the Recipient, her mother, and several of her sisters all lived in houses owned by A. or by his family. Some of her relatives had worked for A. for many years. The Recipient also acknowledged that she had had a relationship with A. for nine years and that they had once planned to be married. The Recipient's allowance had been cancelled on an earlier occasion on the same grounds.

The evidence presented in this case was confusing and the testimony of the Recipient and her witnesses was vague and contradictory. Accordingly, the Board relied on the documentary evidence to a great extent. This was made more difficult because when the Recipient was granted her allowance in 1986 a new application was not completed. The Director relied on the Recipient's prior application for General Welfare Assistance. Until the investigation, very little was done to verify or follow up on the Recipient's eligibility.

It is the Director's duty to determine the Recipient's ongoing eligibility, however, the onus is on the Recipient to establish her eligibility and to provide the necessary information to do so. The Board noted that, in recent years, social assistance legislation has undergone a number of amendments designed to protect privacy by limiting the Director's authority to investigate questions of eligibility. This increases the expectation that Recipients will provide the necessary information when asked to do so. In the Board's view, the Recipient did not meet this expectation. **Appeal denied. Decision of the Director affirmed.** (19 pp; English)

REFERENCES: nil■

DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

SUBJECT: AGREEMENT TO REIMBURSE

File Number: K0723-08

Date of Hearing: February 12, 1992

The Recipient was required, as a condition of eligibility, to sign an agreement to repay the amount of assistance she would receive from the unemployment insurance benefits she expected to receive for the same period of

SUMMARIES OF DECISIONS

time. The Recipient had moved to Ontario from another province. She had also transferred her unemployment insurance file to Ontario, but there was a delay before she received her benefit cheques. She lived with friends in Ontario, but needed money to survive. When the Recipient's unemployment insurance benefits eventually arrived, she did not want to repay the municipality, saying that she would be left with virtually no funds to pay for her rent and other living costs. She therefore appealed to the Board.

The issue before the Board was whether the Administrator could properly require the Recipient to sign such an agreement. The Board concluded that unemployment insurance benefits fall into the category of "monies paid or payable for maintenance", as stipulated in s.4(1) of O.Reg. 441. The word "maintenance" is not defined in the legislation and the Board adopted the plain, ordinary meaning of the word as "a means of sustenance". A reading of the exceptions listed in s.4(1)(b) makes it clear that "maintenance", in this context, is not limited to spousal support. Moreover, a reading of s.13(2)12 indicates that unemployment insurance benefits cannot be considered as exempted or excluded income.

Income payable in respect of any period following the period for which assistance is paid is also exempt from the repayment requirement. When the Recipient's cheques arrived, she received a total of \$1,162. These benefits were clearly for the period for which the Recipient's assistance had been paid and they

exceeded the amount of assistance that she had received. Moreover, had the Recipient received this money earlier, she would not have been eligible for any assistance, since s.13(2) states that such benefits are to be deducted from an individual's entitlement on a dollar-for-dollar basis. Since the unemployment insurance benefits exceeded the Recipient's entitlement, the Board concluded that the Administrator had acted within statutory authority when he exercised his discretion to require the Recipient to sign the agreement. **Appeal denied. Decision of the Administrator affirmed.** (6 pp; English)

REFERENCES: O.Reg. 441 s.4(1), s.4(1)(b), s.13(2), s.13(2)12; "maintenance"■

SUBJECT: DEPENDENT ADULTS

OTHER INDEX TERMS: CREDIBILITY; NATIVE PEOPLE; ONUS; OVERPAYMENTS

File Number: K0326-19

Date of Hearing: March 4, 1992

The Recipients, who were husband and wife, were assessed on several grounds as having an overpayment. Their 20-year-old daughter was considered a dependent adult for the purposes of General Welfare Assistance at the same time as she had been receiving Unemployment Insurance benefits; these benefits were not declared with the Recipients' other income. The Recipient/wife also had income from

GENERAL WELFARE ASSISTANCE ACT

Unemployment Insurance which had not been declared.

The term "dependent adult" is not defined in the legislation and there is ambiguity concerning its interpretation. The case Re Fawcett, for example, takes the view that a child with his or her own means of support is not a dependant. The father testified that he had listed his daughter as a dependant by mistake because the form asked for "children or other dependants" and he was used to listing the names of all of his children. At no time during the period in question did either parent consider their daughter to be dependent for support and maintenance. Moreover, the daughter herself testified that she did not consider herself to be dependent on her parents. The Board concluded that the Recipients' daughter had her own means of support and maintenance and could not therefore be considered a dependant. Consequently, the overpayment was correct.

Further, the Administrator alleged that the Recipients had deliberately misled General Welfare by not declaring all of the wife's income from Unemployment Insurance. The problem, however, was traced to uncertainty in the timing of the cheques not to a deliberate action.

The Recipients argued that the overpayment was a result of administrative error in considering the oldest daughter a "dependent adult" and that the Administrator ought to have contacted them regularly to gain information about their current situation. The Board, however, noted that the

Recipients were familiar with the social assistance system and had filled out similar applications on several previous occasions. The onus, therefore, was on the Recipients to inform the Administrator correctly about their income and dependent children. The Board found no evidence of administrative error and concluded that the overpayment was recoverable. However, the Recipients' intermittent receipt of assistance coupled with the size of the overpayment caused the Board to direct that the overpayment be recovered at no more than 5 per cent of the monthly assistance. **Appeal granted. Decision of the Administrator rescinded.** (26 pp; English)

REFERENCES: O.Reg. 441 s.1(1)(f); Re Fawcett and Board of Review, 1 O.R. (2d) 772; "dependant"■

SUBJECT: EMERGENCY ASSISTANCE

OTHER INDEX TERMS: DISCRETION

File Number: K1006-20

Date of Hearing: April 14, 1992

The Applicant, a sole-support parent, cashed her Family Benefits cheque and spent some of the money on groceries. What remained was later stolen from her apartment. The Applicant filed a police report promptly.

After contacting various community agencies, the only assistance she received was one bag of canned food. She applied for emergency assistance. The Applicant's

SUMMARIES OF DECISIONS

landlord made arrangements for her to pay the rent for that month over a period of time, at \$20 monthly. This repayment caused the Applicant financial hardship.

The Applicant was refused assistance. The Administrator's position was that matters such as house fires, condemned buildings, and abusive situations, among others, are considered to be emergencies because they are verifiable but that lost or stolen money is not verifiable. The issue before the Board was whether emergency assistance was properly refused.

The Board found that the Applicant's Family Benefits allowance was the only income that the Applicant received at the time in question, and that this allowance had been stolen. Therefore, the Applicant did not have any "income that was available to her" and was eligible for assistance.

The Board did not accept the Administrator's definition of an emergency and noted that the legislation gives the Administrator the discretionary power to pay emergency assistance. When exercising a discretionary power, the courts have stated that policy cannot be applied without taking individual circumstances into account.

The Applicant had reported the theft and sought assistance from local agencies; there was little more that she could do. The Board found that the Applicant's loss of money and subsequent desperate situation constituted an emergency situation and concluded that the Administrator had not exercised his

discretion properly. **Appeal granted. Decision of the Administrator rescinded.** (6 pp; English)

REFERENCES: O.Reg. 441 s.3(1)(a), s.8(10)■

SUBJECT: EMPLOYABLE PERSON

OTHER INDEX TERMS: PENSIONS AND PENSIONERS

File Number: K1030-05

Date of Hearing: March 31, 1992

When the Applicant applied for assistance, she advised the worker that she had quit her job to look after her mother who was in ill health. She had received unemployment insurance benefits until they ceased. Since that time the Applicant and her mother had been living on the mother's pensions. The Applicant told the worker that she would not look for employment because of her duties at home. The issue before the Board was whether the Applicant was eligible for assistance while she stayed home to look after an ill parent.

The Applicant was the youngest child of a large family and had always lived at home. Her brothers and sisters had all married and moved away. The Applicant's mother was 70 years old, used a walker, and required a permanent urinary catheter. Her health continued to deteriorate. The Applicant had graduated from Grade 12 and testified that her work history included kitchen work and

GENERAL WELFARE ASSISTANCE ACT

babysitting.

The Administrator's position was that the Applicant was not eligible for assistance because she had refused to pursue or to make herself available for work. The Board agreed with this position, but further noted that the Administrator's authority in this matter is discretionary and that the Administrator must take into account any special circumstances which would make it unreasonable to deny assistance.

In the Board's view, there are cases where looking after an invalid parent might be considered special circumstances, but in the Applicant's case, the evidence was not persuasive. For example, the evidence about why the Applicant was not working was conflicting; sometimes she indicated that she could not work because of her own health, and sometimes she suggested that she could not work because of her mother's health. There was also conflicting evidence about whether or not she was looking for work. Finally, while it might have been true that there was no reasonable alternative other than having the Applicant look after her mother, the balance of the evidence indicated that she was doing so because they both wanted it that way. The Board therefore concluded that the Administrator's decision to refuse assistance was a reasonable exercise of authority. **Appeal denied. Decision of the Administrator affirmed.** (8 pp; English)

REFERENCES: O.Reg.441 s.3(1)(b)(i) and (ii) ■

SUBJECT: PAYMENTS RECEIVED

OTHER INDEX TERMS: GARNISHMENT; INCOME; UNEMPLOYMENT INSURANCE

File Number: K0630-29

Date of Hearing: December 10, 1991

When the Recipient became unemployed, he applied for unemployment insurance benefits. While waiting for his claim to be processed, he received General Welfare Assistance. Subsequently, his unemployment benefits commenced, dated retroactively. As soon as the Recipient's unemployment insurance claim became effective, \$1,566 was recovered to repay the financial assistance he had received. The Recipient had agreed to this at the time of application. The Administrator treated the Recipient's continuing entitlement to unemployment insurance benefits as income and cancelled his assistance because his income exceeded his budgetary requirements.

Fifty per cent of the Recipient's unemployment insurance benefits were garnished to pay his outstanding support arrears; however, he later requested and consented to a court order to increase his garnishment from 50 per cent to 100 per cent. The Recipient testified that he thought it was in his best interest to pay the support arrears more quickly, not realizing that it would give him nothing to live on.

The issue before the Board was whether the Recipient's income included the unemployment insurance benefits garnished to pay support arrears. The

SUMMARIES OF DECISIONS

Recipient's position was that these benefits were not income because they were not actually received by him. He argued that they were actually received on his ex-spouse's behalf rather than his own. He further argued that, even if the garnisheed amount from 50 per cent to 100 per cent was considered to be income, the garnisheed amount from 1 per cent to 50 per cent should not be considered income because it was beyond his control.

In the Board's view, by voluntarily arranging for the garnishment to be increased from 50 per cent to 100 per cent, the Recipient redirected money that could have been available to him for his basic needs. This amount was therefore either received by the Recipient or it was received on his behalf. Further, the Board was unable to agree with the Recipient's argument that the payments must actually be received by the Recipient. This argument is based on the premise that "payments" must be in the form of money. In the opinion of the Board, "payments" are not limited to cash transactions but can include a transaction in cash or kind. Moreover, the words "of any nature or kind" refer not only to the source of the payment but also to the form of the payment: cash, tangible asset, or intangible asset. In the opinion of the Board, the Recipient's debt was decreased by the garnishment and the Recipient therefore benefited.

The Recipient submitted that such a credit should not be counted as income because it did not help to meet his basic needs. While the Board agreed that one

underlying principle of the legislation is to provide for basic needs, this principle is subject to a number of rules, one of which is that social assistance is a final resort, after people have exhausted other resources. There was no evidence to show that the Recipient could not have arranged for the garnishment to be reduced below 50 per cent or even suspended. The Board concluded that the Recipient should bring an application to have the garnishment reduced, rather than seeking assistance to replace the garnisheed amount.

In the Board's opinion, the social assistance system is not intended to pay debts. The definition of a "person in need" requires that the financial need spring from an inability to find work or adequately paid work, from being a single parent, or a child without parental support, or from being disabled or elderly. People who are in financial need for other reasons, including debt, are not entitled to receive assistance. **Appeal denied. Decision of the Administrator affirmed.** (11 pp; English)

REFERENCES: O.Reg. 441 s.1(2), s.13(1), s.13(2)12; "payment"; "person in need"■

SUBJECT: PAYMENTS RECEIVED

OTHER INDEX TERMS: MORTGAGES; SHELTER; SUPPORT OR MAINTENANCE PAYMENTS

File Number: K0818-28

Date of Hearing: February 4, 1992

GENERAL WELFARE ASSISTANCE ACT

The Recipient had three young children. During her marriage she remained at home with her children. The matrimonial home had two mortgages, one of \$100,000 and one of \$35,000. The mortgages were in the husband's name alone.

After the Recipient and her husband separated, the children remained with the mother in this home. Ownership of the home was not transferred to the Recipient. At the time of hearing, no divorce settlement had yet been finalized, but the husband continued to pay the mortgage and the yearly premium for fire insurance. He also paid other household bills such as hydro and water. The Recipient did not expect him to provide additional financial support. She applied for and received welfare assistance.

When the Recipient's entitlement was determined, her maximum shelter allowance was \$715. When determining her budgetary requirements, the Administrator included the mortgage and fire insurance payments in her shelter costs, even though her husband was making the payments. As a result, her shelter costs significantly exceeded her shelter entitlement. When calculating her income, the Administrator treated the full amount of the husband's payments as income to the Recipient. Consequently, her income was considered to be \$1,136.89. This seriously affected her ability to meet the non-shelter expenses for herself and her children.

In the Board's view, it might have been argued that the Recipient did not have

any shelter costs because her husband was paying them, and that his payments were not income to her because he had a legal obligation to make them. In other words, the payments were received on his behalf, not hers. This alternative approach would result in a much larger entitlement. The issue before the Board therefore was whether the Recipient's entitlement had been properly calculated.

In the Board's view, the Administrator's interpretation was more consistent with the plain meaning of the legislation. The definition of "shelter" focuses on "the cost for a dwelling place", rather than on the amount actually paid for shelter. Moreover, "shelter" includes "principal and interest on a mortgage", with or without the qualification that it be paid by the applicant or recipient.

However, the plain meaning of "income" is less clear. The husband owned the matrimonial home. By making the mortgage payments and paying other house-related expenses, the husband preserved his ownership rights and made it possible for the Recipient and her children to remain in their home. Shelter is a benefit, and therefore, the Administrator's interpretation that the husband's payments were received on behalf of the Recipient does not strain the plain meaning of s.13(1).

In the Board's view, the definition of "shelter" includes costs which are not actually paid specifically by an applicant or recipient because shelter costs paid by someone can be included in income. The legislation provides that support payments

received according to a court order or domestic contract are income. Under the Family Law Act, support can include mortgage payments, which means that mortgage payments would clearly be considered income if they were to be paid as support according to a court order. To balance the equation, shelter costs must include the full cost of the shelter, even though an applicant or recipient is not actually making the payments.

In the Board's opinion, the husband's payments were akin to support. In the case of Rintaluhta v. Rintaluhta, the Court held that payments made toward the matrimonial home by a spouse who did not have possession of the home could be treated as support payments, and, in the case before us the only financial contribution that the Recipient's husband made to the family was through his payments, which preserved their right to remain in the home. The Income Tax Act and the Family Support Plan Act (Ontario) also support the notion that third-party payments, such as mortgage payments, are to be treated as support payments.

Lastly, it is the Board's view that the problem stems more from the limits imposed on shelter costs than from the Administrator's interpretation. The regulations recognize shelter costs only up to certain limits and do not recognize other debts at all. This means that people who are "trapped" in expensive housing and who are in real financial need may not be entitled to assistance or may have their assistance reduced. **Referred back.** (15 pp; English)

REFERENCES: Family Law Act, Family Support Plan Act, Income Tax Act; O.Reg. 441 s.12(1)(b); Rintaluhta v. Rintaluhta (1987), 62 O.R. (2d) 379; General Welfare Policy Guidelines, GW-0405-07; "shelter"■

SUBJECT: LIQUID ASSETS

File Number: K0916-14

Date of Hearing: March 31, 1992

After the Applicant had been widowed and she depleted her savings, she applied for assistance. At the time of her application, she declared that she had sold two properties within the last three years and had used up the proceeds from the sales.

After selling her condominium she realized a profit of \$28,700. She repaid a personal loan to her sister, prepaid one-year's rent to her landlord, and used the balance as living expenses for one month before applying for assistance. The Applicant also declared that she sold her family home in another municipality in January 1990 and realized a profit of \$58,431. The proceeds from this sale were spent to pay the mortgage and property taxes and to maintain her condominium before it was sold. A sum was also paid to a friend as a loan and the balance of the proceeds was used as living expenses for an eighteen-month period.

The Administrator determined that she was ineligible because she had transferred the assets for inadequate consideration.

GENERAL WELFARE ASSISTANCE ACT

Specifically, the Administrator argued that the Applicant had no legal responsibility to repay the loan to her sister since they had not signed a loan agreement. Moreover, there was no valid reason why the Applicant should prepay one-year's rent.

Although the Board was concerned that the Applicant did not have documents to support her claims, the Board gave her the benefit of the doubt because of her special circumstances. After the death of her husband, the Applicant was involved in a serious car accident and was also diagnosed as having ovarian cancer. In the Board's view, it was also understandable that the Applicant did not keep a detailed account of her spending because she did not expect that she would have to apply for assistance.

The Board disagreed with the argument that the repayment of the loan to her sister was an inadequate transfer of assets. The sister had lent the money to help the Applicant to renovate her family home and a loan agreement between the Applicant's sister and the Applicant's deceased husband had been signed. In the Board's view, the Applicant had a moral responsibility to return the loan to her sister and this did not constitute an inadequate transfer of assets.

The Board further determined that the rent prepayment was not an inadequate transfer of assets. The Applicant had just been released from hospital after her cancer surgery when she made the payment and she felt it was prudent to ensure some stability in her living

arrangements. The Board, however, concluded that since she had prepaid her rent, she was not eligible for shelter costs other than the heating costs that she had to pay separately during this period. Furthermore, the amount spent on living costs was reasonable and not a disposal of assets for inadequate consideration.

The Board, however, did not consider the loan to a friend as an acceptable transfer of assets. There was no loan agreement, no interest charge, and the period of the loan was undetermined; moreover, the Applicant testified that she really considered this loan to be a gift because her friend, who was receiving social assistance, would never be able to repay her.

In the Board's view, the Applicant had not benefited materially from these funds, nor had she even placed them where she might benefit from them in the future. Taking the circumstances into account, the Board found the Applicant's transfer of funds to be a unique situation. The Applicant was a person in need and denial of assistance for an indefinite period of time would place her in a destitute situation. In the Board's opinion, a reduction in the amount of assistance was more appropriate than finding the Applicant ineligible. The Board therefore ordered that she be granted assistance but that the assistance be reduced by 20 per cent to compensate for the gift to her friend. **Appeal granted in part. Decision of the Administrator rescinded in part.** (6 pp; English)

REFERENCES: O.Reg. 441 s.5(1)■

SUBJECT: REFUGEES

OTHER INDEX TERMS: RESIDENCE

File Number: K1007-06

Date of Hearing: April 14, 1992

When the Applicant applied for assistance, he informed the department that he had no legal status in Canada. Canadian immigration authorities also informed the department that a removal order was in effect against the Applicant. The Administrator determined that he did not meet the eligibility requirement of "residing" in the municipality.

The issues before the Board were whether the Applicant met the residency requirement and whether he met the requirements for refugees set out in the legislation.

The Applicant came to Canada in 1989. He made a refugee claim against his native country A, although he had resided in country B just before arriving in Canada. He travelled to Canada with false travel documents. He had no travel documents for his native country, A.

At his initial refugee determination hearing, he was found to have no credible claim to refugee status in Canada. When the hearing was over, he was detained in a local detention centre for several months while the government attempted to get travel documents for his return to his native country, A. The request was refused and the government therefore approached country B, which also refused to cooperate. The Applicant was released

from detention; one condition of his release was that he was not permitted to engage in employment. The Applicant pointed out that he was in the frustrating position of being considered a "removable" person who could not be removed because his native country refused to issue travel documents for his return home. Moreover, the Applicant feared returning home, where he believed his life would be in danger; he wanted to stay in Canada. He had taken steps to obtain employment authorization so that he could support himself until his case was settled, but was refused because he did not belong to the "unremovable" category. With no money, no source of financial support, and no authorization to seek employment, he became destitute after his release from detention.

The Applicant was clearly a person in need. In order to meet the other threshold test for eligibility, the Act states that an applicant must also reside in the municipality. More specifically, s.1(6) of O.Reg. 441 requires that refugee claimants must either be authorized to permanently reside in Canada or have claimed refugee status. An Applicant is not required to show that he is legally authorized to permanently reside in Canada.

In the Board's opinion, because the Applicant had made a refugee claim in Canada, he had satisfied the requirements expected of a refugee claimant. The wording of this provision does not make it clear whether the intent is that every person who makes a refugee claim, whether successful or not, is deemed to

GENERAL WELFARE ASSISTANCE ACT

be a resident in Ontario. However, the Board maintains that the plain meaning is that the Applicant was resident in Ontario for the purposes of meeting the residence requirement for eligibility, and that any ambiguity should be resolved in favour of the Applicant. In the Board's view, if a refugee claim had been denied and the claimant had exhausted all appeal possibilities it would not be reasonable to use the refugee claim to satisfy the residency requirement. However, in this case, the authorities had not yet decided whether to classify the Applicant as removable. **Appeal granted. Decision of the Administrator rescinded.** (10 pp; English)

REFERENCES: General Welfare Assistance Act s.7(1); O.Reg. 441 s.1(6); Kerr v. Metropolitan Toronto (1981), 4 O.R. (3d) 430■

SUBJECT: REFUSED OR RESIGNED
FROM EMPLOYMENT

File Number: K0812-19
Date of Hearing: June 30, 1992

While receiving General Welfare Assistance, the Recipient found a full-time job in a city some distance from her home. The job involved demonstrating and selling vacuum cleaners on commission. During the training period, the Recipient was told that she would earn a guaranteed \$1,300 per month. When she reported this possible income, her assistance was terminated. After two weeks on the job, the Recipient had

earned only \$56. When she reapplied for assistance, she was refused on the grounds that she had resigned from employment without reasonable cause.

There were many misunderstandings about the nature of the Recipient's job, which only became apparent after the training period was over. For example, she was led to believe that appointments with prospective purchasers would be set up in advance by telephone. Instead, a group of employees were driven to a given area by van and they were then required to find prospective buyers by knocking on doors. The Recipient found this deceitful. She was also told that she would make \$400 on every vacuum cleaner she sold and that she would be guaranteed \$1,300 per month if she made sixty demonstrations. This averaged out to three demonstrations per day. She later discovered that it was impossible to make the quota of demonstrations because of the time required to drive to another town, to find an interested party, and to perform a demonstration. When she finally sold a vacuum cleaner she received only \$56 instead of the promised \$400, because the trade-in value of the vacuum cleaner was deducted from the amount payable to her. She left the job a few days later.

There was no dispute that the Recipient had resigned from her employment. The question before the Board was whether she had left "without reasonable cause". The Administrator argued that an individual normally accepts responsibility for the conditions of employment when hired and pointed out that the Recipient

should have asked more questions of her prospective employer. The Board, however, accepted the Recipient's evidence that she had not been fully informed by her employer, and concluded that it was reasonable to withdraw from an employer who had not acted with integrity. **Appeal granted. Decision of the Administrator rescinded.** (7 pp; English)

REFERENCES: O.Reg. 441 s.3(2d)■

SUBJECT: RESIDENCE

OTHER INDEX TERMS: VISITORS

File Number: K0405-18

Date of Hearing: August 7, 1992

The Applicant was a medical doctor who was in Canada on a fellowship. To fulfil the terms of the fellowship, he worked at a medical centre associated with the local university. A letter from the university indicated that the Applicant was accepted as a Fellow from January 1, 1991, to June 30, 1992, however his permit allowed him to stay in Canada as a visitor only until November 30, 1991. The Applicant, who wished to remain in Canada, had also applied for permanent resident status, but no decision had been reached at the time of his hearing before the Board. The Applicant had also been awarded assistance from legal aid to pay for a lawyer and for expenses connected with his immigration hearing. Because he was not permitted to work he had no income. He was refused assistance on the

grounds that he was not a resident of the municipality.

Following the reasoning in the Richardson case, the Board concluded that the Applicant resided in the municipality according to the plain common-sense meaning of the word. The Applicant had de facto lived and worked in the municipality for a number of months, and had demonstrated his intention to continue to do so. The legislation does not mention immigration status as a criterion for eligibility, and in the Board's view, immigration status alone is not determinative of residency or of eligibility for assistance. The Board found that because the Applicant was not able to work in Canada and had no source of income, he was a person in need and was eligible for assistance. **Appeal granted. Decision of the Administrator rescinded.** (7 pp; English)

REFERENCES: Richardson and the Commissioner of Metropolitan Toronto Department of Social Services. Re Issa and the Commissioner of Metropolitan Toronto Department of Social Services, 46 O.R.(2d) 63■

SUBJECT: STUDENTS

OTHER INDEX TERMS: ONTARIO STUDENT ASSISTANCE PROGRAM

File Number: K0808-26

Date of Hearing: March 10, 1992

The Applicant was married and had four

GENERAL WELFARE ASSISTANCE ACT

young children. He had a Grade 12 education and no formal training. After leaving school, he learned carpentry skills and began his own carpentry business.

In the winter of 1991, the Applicant did not expect to have any work and therefore decided to upgrade his skills. He applied for admission to a post-secondary program leading to a diploma in computer programming. It was a co-op program which required students to find relevant work experience while studying. The Applicant eventually received a loan from the Ontario Student Assistance Program but was not approved for a grant, because of the equity he had in his house. When he applied for assistance, the Applicant was advised that he was ineligible because his program of study had not been approved.

At the time of his application, the Applicant was considered to be an employable person. In order to be eligible for assistance, employable people generally must be willing to work and must be making reasonable efforts to find employment. The legislation, however, creates a limited exception for certain students. Section 6 suggests that welfare may be available to fill some gaps in the Ontario Student Assistance Program, at the discretion of the Director. The legislation, however, gives no guidance as to how this discretion should be exercised. In the Board's view, it is not clear that assistance under the General Welfare Assistance Act is meant to be provided to employable people so that they can attend school in a full-time, three-year program, even though there

may be a work component to their program of studies.

The Board concluded that it was reasonable for the Administrator to refuse assistance in this case, for several reasons. First, the Applicant applied for assistance at the beginning of a three-year program. Second, the program was full time and would likely prevent him from looking for work, except during his work terms. Third, the Applicant was refused an O.S.A.P. grant because of his assets. Fourth, the Applicant had a marketable skill and it was not obvious that his chosen program of studies was the most suitable for him. **Appeal denied. Decision of the Administrator affirmed.** (7 pp; English)

REFERENCES: O.Reg. 441 s.6(1), s.6(2)■

PART III

DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

SUBJECT: EDUCATIONAL PROGRAMS

File Number: K0801-09

Date of Hearing: April 29, 1992

The Applicant suffered from substance abuse. He was found to be eligible for

SUMMARIES OF DECISIONS

Vocational Rehabilitation Services. At the time of his application, he advised the counsellor that he had previously been sponsored by Canada Employment and Immigration in a stationary engineering program at a local college. He had completed part of the program but had not wanted to continue in it. Instead, he sought sponsorship from VRS to attend a civil engineering program. The Applicant did not present any evidence to support his request for a new program on the basis of his disability, so the Director decided it was reasonable to assist him to complete the stationary engineering program. The Applicant appealed the decision.

The spokesperson for the Director submitted that the purpose of VRS was to enable disabled persons to pursue gainful occupations, not to assist them in changing careers. The Applicant submitted that he had enrolled in the stationary engineering program voluntarily but that he no longer considered it to be a viable option for him because there were fewer job opportunities in the field than in the civil engineering field. He introduced a labour report prepared by the federal government in support of this submission. The issue before the Board was whether

the Director correctly exercised his discretion by refusing to provide the Applicant with support to train as a civil engineer.

The Board agrees that Vocational Rehabilitation Services is not there to fund career changes. However, in the Board's view, the Applicant had not made a "career change" because he had not yet had a career. Moreover, the Board accepted the Applicant's evidence about the lack of jobs in the stationary engineering field and noted that this program is now offered at only one college in the province. The Applicant would have had to leave his community to attend this program, a move which might have adversely affected his sobriety. In the opinion of the Board, it would have been more reasonable for the Applicant's counsellor to have investigated the possibility of employment in the stationary engineering field before making his final recommendation. The Board concluded that the Director unreasonably exercised his discretion by not permitting attendance in the civil engineering program. **Appeal granted. Decision of the Director rescinded.** (9 pp; English)

REFERENCES: nil■

CUMULATIVE INDEX

This index includes cases published in Volume 2:1, Volume 2:2, and Volume 2:3 of
SUMMARIES OF DECISIONS.

PART I: DECISIONS UNDER THE FAMILY BENEFITS ACT

ABSENT FROM ONTARIO

K0825-45
Volume 2:3 OCT 1992 p.5

AGE

K0426-03
Volume 2:2 JUL 1992 p.10

ASSIGNMENT

J0104-16
Volume 2:3 OCT 1992 p.7

AVAILABLE FINANCIAL RESOURCE

K0717-19
Volume 2:2 JUL 1992 p.13

BENEFICIARIES

K0426-03
Volume 2:2 JUL 1992 p.10
K0805-02
Volume 2:2 JUL 1992 p.11

BOARD AND LODGING

K0422-08
Volume 2:2 JUL 1992 p.10

CANADA PENSION PLAN

J0104-16
Volume 2:3 OCT 1992 p.7

CO-RESIDENCE

J0816-12
Volume 2:1 APR 1992 p.10
K0919-03
Volume 2:2 JUL 1992 p.12

CREDIBILITY

J0920-14
Volume 2:3 OCT 1992 p.10
K0717-19
Volume 2:2 JUL 1992 p.13
K0919-03
Volume 2:2 JUL 1992 p.12

DAMAGES OR COMPENSATION FOR PAIN AND SUFFERING

J0230-08
Volume 2:2 JUL 1992 p.5
J1108-17
Volume 2:2 JUL 1992 p.9

DEAF PERSONS

J0730-04
Volume 2:1 APR 1992 p.7

DISCRETION

J0104-16
Volume 2:3 OCT 1992 p.7
K0129-32
Volume 1:2 APR 1992 p.6
K0501-19
Volume 2:1 JUL 1992 p.7
K0829-04
Volume 2:3 OCT 1992 p.8
K0923-31
Volume 2:3 OCT 1992 p.5

EDUCATIONAL INSTITUTIONS

K0520-24
Volume 2:2 JUL 1992 p.8

EVIDENCE

J0104-16
Volume 2:3 OCT 1992 p.7
J0516-12
Volume 2:2 JUL 1992 p.12
J0920-14
Volume 2:3 OCT 1992 p.10
J0920-23
Volume 2:1 APR 1992 p.9

EXTENSION OF TIME

J0827-28
Volume 2:1 APR 1992 p.13
K0520-24
Volume 2:2 JUL 1992 p.8
K0805-02
Volume 2:2 JUL 1992 p.11
K0923-31
Volume 2:3 OCT 1992 p.5

FINANCIAL HARDSHIP

K0520-24
Volume 2:2 JUL 1992 p.8

FUNERALS AND FUNERAL PLANS

K0129-32
Volume 2:1 APR 1992 p.6

HANDICAPPED CHILDREN

K0501-1
Volume 2:2 JUL 1992 p.7
K0825-30
Volume 2:2 JUL 1992 p.7

HOMES, HOSPITALS AND INSTITUTIONS,
PATIENT OR RESIDENT IN

H0208-10R
Volume 2:1 APR 1992 p.5
K0129-32
Volume 2:1 APR 1992 p.6
K0923-31
Volume 2:3 OCT 1992 p.5

INCOME

J0230-08
Volume 2:2 JUL 1992 p.5
J1108-17
Volume 2:2 JUL 1992 p.9
K0501-19
Volume 2:2 JUL 1992 p.7

INSURANCE

J1108-17
Volume 2:2 JUL 1992 p.9
K0206-16
Volume 2:1 APR 1992 p.8

JURISDICTIONAL ISSUES

J0702-08
Volume 2:1 APR 1992 p.11

LIQUID ASSETS

J0702-08
Volume 2:1 APR 1992 p.11
K0129-32
Volume 2:1 APR 1992 p.6
K0829-04
Volume 2:3 OCT 1992 p.8

MEDICAL ADVISORY BOARD

J0918-05
Volume 2:1 APR 1992 p.9

MEDICAL CONDITIONS

J0918-05
Volume 2:1 APR 1992 p.9

MORTGAGES

K0829-04
Volume 2:3 OCT 1992 p.8

MOTHER WITH DEPENDENT CHILDREN

H0208-10R
Volume 2:1 APR 1992 p.5

ONUS

J0920-14
Volume 2:3 OCT 1992 p.10
K0919-03
Volume 2:2 JUL 1992 p.12

ONTARIO MOTORIST PROTECTION PLAN

J1108-17
Volume 2:2 JUL 1992 p.9
K0206-16
Volume 2:1 APR 1992 p.8

ORDER IN COUNCIL

J0702-08
Volume 2:1 APR 1992 p.11

CUMULATIVE INDEX

ORDER IN COUNCIL, cont'd

K0825-30

Volume 2:2 JUL 1992 p.7

OVERPAYMENTS

J0104-16

Volume 2:3 OCT 1992 p.7

J0730-04

Volume 2:1 APR 1992 p.7

K0129-32

Volume 2:1 APR 1992 p.6

K0426-03

Volume 2:2 JUL 1992 p.10

K0805-02

Volume 2:2 JUL 1992 p.11

K0829-04

Volume 2:3 OCT 1992 p.8

PAYMENTS RECEIVED

J0104-16

Volume 2:3 OCT 1992 p.7

J0730-04

Volume 2:1 APR 1992 p.7

J1108-17

Volume 2:2 JUL 1992 p.9

K0206-16

Volume 2:1 APR 1992 p.8

K0829-04

Volume 2:3 OCT 1992 p.8

PENSIONS AND PENSIONERS

K0829-04

Volume 2:3 OCT 1992 p.8

PERMANENTLY UNEMPLOYABLE PERSON

J0516-12

Volume 2:2 JUL 1992 p.12

J0918-05

Volume 2:1 APR 1992 p.9

J0920-23

Volume 2:1 APR 1992 p.9

K0912-10

Volume 2:3 OCT 1992 p.9

PUTATIVE FATHER

K0717-19

Volume 2:2 JUL 1992 p.13

RECONSIDERATIONS

H0208-10R

Volume 2:1 APR 1992 p.5

REFUGEES

K0426-03

Volume 2:2 JUL 1992 p.9

RENT

K0422-08

Volume 2:2 JUL 1992 p.5

RENTALS

K0912-10

Volume 2:3 OCT 1992 p.9

SHELTER

K0912-10

Volume 2:3 OCT 1992 p.9

K0923-31

Volume 2:3 OCT 1992 p.5

SINGLE PARENT WITH DEPENDENT CHILDREN

K0520-24

Volume 2:2 JUL 1992 p.8

SPOUSE

J0816-12

Volume 2:1 APR 1992 p.10

J0920-14

Volume 2:3 OCT 1992 p.10

K0919-03

Volume 2:2 JUL 1992 p.12

STRUCTURED SETTLEMENTS

J0230-08

Volume 2:2 JUL 1992 p.5

SUPPORT OR MAINTENANCE PAYMENTS

K0717-19

Volume 2:2 JUL 1992 p.13

TRUSTS

J0702-08

Volume 2:1 APR 1992 p.11

J0827-28

Volume 2:1 APR 1992 p.13

SUMMARIES OF DECISIONS

**PART II: DECISIONS UNDER THE
GENERAL WELFARE ASSISTANCE ACT**

AGE

J1206-13
Volume 2:1 APR 1992 p.14

AGREEMENT TO REIMBURSE

K0723-08
Volume 2:3 OCT 1992 p.10

APPLICATIONS

J1206-13
Volume 2:1 APR 1992 p.14

ASSIGNMENT

K0404-05
Volume 2:2 JUL 1992 p.16

AVAILABLE FINANCIAL RESOURCE

K0619-07
Volume 2:2 JUL 1992 p.19

CASUAL GIFTS

K0208-02
Volume 2:1 APR 1992 p.15
K0604-16
Volume 2:1 APR 1992 p.16

CONCURRING OPINIONS

J0214-23
Volume 2:1 APR 1992 p.25

CREDIBILITY

J1010-20
Volume 2:1 APR 1992 p.29
J1017-03
Volume 2:1 APR 1992 p.30
K0325-08
Volume 2:2 JUL 1992 p.22
K0326-19
Volume 2:3 OCT 1992 p.11
K0402-26
Volume 2:2 JUL 1992 p.21
K0819-16
Volume 2:2 JUL 1992 p.21

DEPENDENT ADULTS

J0822-15
Volume 2:1 APR 1992 p.26
K0326-19
Volume 2:3 OCT 1992 p.11
K0721-32
Volume 2:2 JUL 1992 p.24
K0721-33
Volume 2:2 JUL 1992 p.24

DEPENDENT CHILD

J1127-27
Volume 2:1 APR 1992 p.17

DISCRETION

J0822-15
Volume 2:1 APR 1992 p.26
J1205-16
Volume 2:1 APR 1992 p.28
K0208-02
Volume 2:1 APR 1992 p.15
K0619-07
Volume 2:2 JUL 1992 p.19
K0721-32
Volume 2:2 JUL 1992 p.24
K0721-33
Volume 2:2 JUL 1992 p.24
K1006-20
Volume 2:3 OCT 1992 p.12

DRUG BENEFITS

K0130-03
Volume 2:1 APR 1992 p.24

EMERGENCY ASSISTANCE

K1006-20
Volume 2:3 OCT 1992 p.12

EMPLOYABLE PERSON

J0920-06
Volume 2:1 APR 1992 p.18
J1112-12
Volume 2:1 APR 1992 p.19
K1030-05
Volume 2:3 OCT 1992 p.13

EVIDENCE

K0116-13
Volume 2:2 JUL 1992 p.15

CUMULATIVE INDEX

EVIDENCE, cont'd

K0819-16
Volume 2:2 JUL 1992 p.21

EXTENSION OF TIME

K0402-26
Volume 2:2 JUL 1992 p.20

FAILURE TO PROVIDE INFORMATION

K0116-13
Volume 2:2 JUL 1992 p.15
K0619-07
Volume 2:2 JUL 1992 p.19

FARMS AND FARMERS

K0506-02
Volume 2:2 JUL 1992 p.17

FOSTER PARENTS AND CHILDREN

J1127-27
Volume 2:1 APR 1992 p.17

FRAUD

K0402-26
Volume 2:2 JUL 1992 p.20

GARNISHMENT

J1205-21
Volume 2:1 APR 1992 p.21
J1205-24
Volume 2:2 JUL 1992 p.18
J1227-12
Volume 2:1 APR 1992 p.22
K0630-29
Volume 2:2 OCT 1992 p.14

HEAD OF A FAMILY

J0214-23
Volume 2:1 APR 1992 p.25

INCOME

J1205-21
Volume 2:1 APR 1992 p.21
J1227-12
Volume 2:1 APR 1992 p.22
K0130-03
Volume 2:1 APR 1992 p.24
K0208-02
Volume 2:1 APR 1992 p.15

INCOME, cont'd

K0604-16
Volume 2:1 APR 1992 p.16
K0630-29
Volume 2:3 OCT 1992 p.14
K1006-17
Volume 2:2 JUL 1992 p.14

JOB SEARCH

J0920-06
Volume 2:1 APR 1992 p.18
J1112-12
Volume 2:1 APR 1992 p.19
K0819-16
Volume 2:2 JUL 1992 p.21

JURISDICTIONAL ISSUES

J0106-11
Volume 2:1 APR 1992 p.25
K0110-15
Volume 2:2 JUL 1992 p.26

LIQUID ASSETS

J0610-19
Volume 2:1 APR 1992 p.21
J0528-13
Volume 2:1 APR 1992 p.20
K0116-13
Volume 2:2 JUL 1992 p.15
K0404-05
Volume 2:2 JUL 1992 p.16
K0506-02
Volume 2:2 JUL 1992 p.17
K0916-14
Volume 2:3 OCT 1992 p.17
K1107-21
Volume 2:2 JUL 1992 p.22

MORTGAGES

K0818-28
Volume 2:3 OCT 1992 p.15

NATIVE PEOPLE

J0528-13
Volume 2:1 APR 1992 p.20
K0326-19
Volume 2:3 OCT 1992 p.11

SUMMARIES OF DECISIONS

NOTICE REQUIREMENTS

K0110-15
Volume 2:2 JUL 1992 p.26

ONTARIO STUDENT ASSISTANCE PROGRAM

J0822-15
Volume 2:1 APR 1992 p.26
K0721-32
Volume 2:2 JUL 1992 p.24
K0721-33
Volume 2:2 JUL 1992 p.24
K0808-26
Volume 2:3 OCT 1992 p.21

ONUS

K0326-19
Volume 2:3 OCT 1992 p.11

OVERPAYMENTS

K0326-19
Volume 2:3 OCT 1992 p.11

PARTNERSHIPS

K0116-13
Volume 2:2 JUL 1992 p.15

PAYMENTS RECEIVED

J1205-21
Volume 2:1 APR 1992 p.21
J1205-24
Volume 2:2 JUL 1992 p.18
J1227-12
Volume 2:1 APR 1992 p.22
K0130-03
Volume 2:1 APR 1992 p.24
K0208-02
Volume 2:1 APR 1992 p.15
K0630-29
Volume 2:3 OCT 1992 p.14
K0604-16
Volume 2:1 APR 1992 p.16
K0818-28
Volume 2:3 OCT 1992 p.15
K1006-17
Volume 2:2 JUL 1992 p.14

PENSIONS AND PENSIONERS

K0619-07
Volume 2:2 JUL 1992 p.19

PENSIONS AND PENSIONERS, cont'd

K1030-05
Volume 2:3 OCT 1992 p.13

REFUGEES

K0402-26
Volume 2:2 JUL 1992 p.20
K0721-32
Volume 2:2 JUL 1992 p.24
K1007-06
Volume 2:3 OCT 1992 p.19

REFUSED OR RESIGNED FROM EMPLOYMENT

K0812-19
Volume 2:3 OCT 1992 p.20

RESIDENCE

J1205-16
Volume 2:1 APR 1992 p.28
K0405-18
Volume 2:3 OCT 1992 p.21
K1007-06
Volume 2:3 OCT 1992 p.19

SELF-EMPLOYED

K0819-16
Volume 2:2 JUL 1992 p.21
K1107-21
Volume 2:2 JUL 1992 p.22

SHELTER

K0130-03
Volume 2:1 APR 1992 p.24
K0818-28
Volume 2:3 OCT 1992 p.15

SPECIAL CIRCUMSTANCES

J1206-13
Volume 2:1 APR 1992 p.14

SPONSORSHIP

K0325-08
Volume 2:2 JUL 1992 p.22

SPOUSE

J0214-23
Volume 2:1 APR 1992 p.25
K0721-32
Volume 2:2 JUL 1992 p.24

CUMULATIVE INDEX

SPOUSE, cont'd

K0721-33

Volume 2:2 JUL 1992 p.24

STUDENTS

J0106-11

Volume 2:1 APR 1992 p.25

J0822-15

Volume 2:1 APR 1992 p.26

J1128-06

Volume 2:1 APR 1992 p.27

J1205-16

Volume 2:1 APR 1992 p.28

K0721-32

Volume 2:2 JUL 1992 p.24

K0721-33

Volume 2:2 JUL 1992 p.24

K0808-26

Volume 2:3 OCT 1992 p.21

SUPPORT OR MAINTENANCE PAYMENTS

J1205-21

Volume 2:1 APR 1992 p.21

J1227-12

Volume 2:1 APR 1992 p.22

K0818-28

Volume 2:3 OCT 1992 p.15

TAXES

K1006-17

Volume 2:2 JUL 1992 p.14

UNEMPLOYMENT DUE TO CIRCUMSTANCES NOT WITHIN CONTROL

J0920-06

Volume 2:1 APR 1992 p.18

J1010-20

Volume 2:1 APR 1992 p.29

J1017-03

Volume 2:1 APR 1992 p.30

J1128-06

Volume 2:1 APR 1992 p.27

UNEMPLOYMENT INSURANCE

J1205-21

Volume 2:1 APR 1992 p.21

J1205-24

Volume 2:2 JUL 1992 p.18

J1227-12

Volume 2:1 APR 1992 p.22

UNEMPLOYMENT INSURANCE, cont'd

K0630-29

Volume 2:3 OCT 1992 p.14

K1006-17

Volume 2:2 JUL 1992 p.14

VISITORS

K0405-18

Volume 2:3 OCT 1992 p.21

PART III: DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

BENEFITING FROM SERVICES

J0117-17

Volume 2:1 APR 1992 p.31

J0621-15

Volume 2:1 APR 1992 p.35

DISCRETION

G1006-18R

Volume 2:1 APR 1992 p.32

K0227-26

Volume 2:1 APR 1992 p.32

EDUCATIONAL PROGRAMS

K0227-26

Volume 2:1 APR 1992 p.32

K0801-09

Volume 2:3 OCT 1992 p.22

FAILURE TO PROVIDE INFORMATION

J0820-10

Volume 2:1 APR 1992 p.34

JURISDICTIONAL ISSUES

K0110-15

Volume 2:2 JUL 1992 p.26

LEARNING DISABLED

K0227-26

Volume 2:1 APR 1992 p.32

SUMMARIES OF DECISIONS

NOTICE REQUIREMENTS

K0110-15
Volume 2:2 JUL 1992 p.26

RECONSIDERATIONS

G1006-18R
Volume 2:1 APR 1992 p.32

SATISFACTORY PROGRESS

J0820-10
Volume 2:1 APR 1992 p.34
J0621-15
Volume 2:1 APR 1992 p.35

VOCATIONALLY DISABLED

J0820-10
Volume 2:1 APR 1992 p.34
K0215-21
Volume 2:2 JUL 1992 p.27

s.14

K0110-15
Volume 2:2 JUL 1992 p.26

s.17

J0104-16
Volume 2:3 OCT 1992 p.7
J0730-04
Volume 2:1 APR 1992 p.7
K0426-03
Volume 2:2 JUL 1992 p.10
K0805-02
Volume 2:2 APR 1992 p.11

Family Law Act

K0818-28
Volume 2:3 OCT 1992 p.15

Family Support Plan Act

K0818-28
Volume 2:3 OCT 1992 p.15

General Welfare Assistance Act, R.S.O. 1980, c.188

s.7(1)

K1007-06
Volume 2:3 OCT 1992 p.19

s.10(2)(c)

K0208-02
Volume 2:1 APR 1992 p.15

Income Tax Act

J1205-24
Volume 2:2 JUL 1992 p.18
K0818-28
Volume 2:3 OCT 1992 p.15

Indian Act

J0528-13
Volume 2:1 APR 1992 p.20

Insurance Act, No-Fault Benefit Schedule

s.13(1)

J1108-17
Volume 2:2 JUL 1992 p.9

s.13(4)

J1108-17
Volume 2:2 JUL 1992 p.9

REFERENCES TO STATUTES AND REGULATIONS

Child and Family Services Act

s.14(i) and (ii)
J1127-27
Volume 2:1 APR 1992 p.17

Family Benefits Act, R.S.O. 1980, c.151

s.1(1)
K0805-02
Volume 2:2 JUL 1992 p.11

s.1(c)
K0805-02
Volume 2:2 JUL 1992 p.11

s.1(f)(i)
K0520-24
Volume 2:2 JUL 1992 p.8

s.12(b)
K0825-45
Volume 2:3 OCT 1992 p.5

s.13
K0110-15
Volume 2:2 JUL 1992 p.26

CUMULATIVE INDEX

Ontario Regulation 318, R.R.O. 1980

| | | | |
|-----------------|------------|----------|------|
| s.1(1)(aa) | J0702-08 | | |
| | Volume 2:1 | APR 1992 | p.11 |
| | J0827-28 | | |
| | Volume 2:1 | APR 1992 | p.13 |
| s.1(1)(aa)(vii) | K0129-32 | | |
| | Volume 2:1 | APR 1992 | p.6 |
| s.1(1b) | K0919-03 | | |
| | Volume 2:2 | JUL 1992 | p.12 |
| s.1(2) | K0520-24 | | |
| | Volume 2:2 | JUL 1992 | p.8 |
| s.1(1)(d) | J0816-12 | | |
| | Volume 2:1 | APR 1992 | p.10 |
| s.3(2)(a) | J0702-08 | | |
| | Volume 2:1 | APR 1992 | p.11 |
| s.5(a)(i) | H0208-10R | | |
| | Volume 2:1 | APR 1992 | p.5 |
| s.8 | J0827-28 | | |
| | Volume 2:1 | APR 1992 | p.13 |
| s.13(1) | J0730-04 | | |
| | Volume 2:1 | APR 1992 | p.7 |
| | J1108-17 | | |
| | Volume 2:2 | JUL 1992 | p.9 |
| | K0206-16 | | |
| | Volume 2:1 | APR 1992 | p.8 |
| s.13(2) | J0730-04 | | |
| | Volume 2:1 | APR 1992 | p.7 |
| s.13(2)41 | J0230-08 | | |
| | Volume 2:2 | JUL 1992 | p.5 |
| | J1108-17 | | |
| | Volume 2:2 | JUL 1992 | p.9 |
| s.13(7) | J0104-16 | | |
| | Volume 2:3 | OCT 1992 | p.7 |
| | K0829-04 | | |
| | Volume 2:3 | OCT 1992 | p.8 |

| | | | |
|------------|------------|----------|------|
| s.13(8) | J0104-16 | | |
| | Volume 2:3 | OCT 1992 | p.7 |
| s.14(3) | J0702-08 | | |
| | Volume 2:1 | APR 1992 | p.11 |
| s.16(2) | K0923-31 | | |
| | Volume 2:3 | OCT 1992 | p.5 |
| s.16(3) | K0129-32 | | |
| | Volume 2:1 | APR 1992 | p.6 |
| s.30(4) | K0422-08 | | |
| | Volume 2:2 | JUL 1992 | p.5 |
| s.30(5) | K0422-08 | | |
| | Volume 2:2 | JUL 1992 | p.5 |
| s.30(5a) | K0422-08 | | |
| | Volume 2:2 | JUL 1992 | p.5 |
| s.38 | K0825-30 | | |
| | Volume 2:2 | JUL 1992 | p.7 |
| s.38(2) | K0501-19 | | |
| | Volume 2:2 | JUL 1992 | p.7 |
| s.38(3)(d) | K0501-19 | | |
| | Volume 2:2 | JUL 1992 | p.7 |
| s.41(1) | K0912-10 | | |
| | Volume 2:3 | OCT 1992 | p.9 |
| s.41(4)(a) | K0912-10 | | |
| | Volume 2:3 | OCT 1992 | p.9 |

Ontario Regulation 441, R.R.O. 1980

| | | | |
|-----------|------------|----------|------|
| s.1(1)(f) | K0326-19 | | |
| | Volume 2:3 | OCT 1992 | p.11 |
| | K0721-32 | | |
| | Volume 2:2 | JUL 1992 | p.24 |
| s.1(1)(i) | J0214-23 | | |
| | Volume 2:1 | APR 1992 | p.25 |

SUMMARIES OF DECISIONS

Ontario Regulation 441, cont'd

| | | | |
|----------------|------------|----------|------|
| s.1(1)(k) | J0528-13 | | |
| | Volume 2:1 | APR 1992 | p.20 |
| | J0610-19 | | |
| | Volume 2:1 | APR 1992 | p.21 |
| s.1(2) | K0630-29 | | |
| | Volume 2:3 | OCT 1992 | p.14 |
| s.1(2)(b) | J0214-23 | | |
| | Volume 2:1 | APR 1992 | p.25 |
| s.1(3) | K0819-16 | | |
| | Volume 2:2 | JUL 1992 | p.21 |
| | K1107-21 | | |
| | Volume 2:2 | JUL 1992 | p.22 |
| s.1(6) | K1007-06 | | |
| | Volume 2:3 | OCT 1992 | p.19 |
| s.3(1)(a) | K1006-20 | | |
| | Volume 2:2 | OCT 1992 | p.12 |
| s.3(1)(b)(i) | K1030-05 | | |
| | Volume 2:3 | OCT 1992 | p.13 |
| s.3(1)(b)(ii) | K1030-05 | | |
| | Volume 2:3 | OCT 1992 | p.13 |
| s.3(1)(b)(iii) | J1112-12 | | |
| | Volume 2:1 | APR 1992 | p.19 |
| s.3(2d) | K0812-19 | | |
| | Volume 2:3 | OCT 1992 | p.20 |
| s.3(3) | J1128-06 | | |
| | Volume 2:1 | APR 1992 | p.27 |
| s.3(3)(a) | K0721-33 | | |
| | Volume 2:2 | JUL 1992 | p.24 |
| s.3(3)(b) | J0528-13 | | |
| | Volume 2:1 | APR 1992 | p.20 |
| | K0325-08 | | |
| | Volume 2:2 | JUL 1992 | p.22 |
| s.4(1) | K0723-08 | | |
| | Volume 2:3 | OCT 1992 | p.10 |
| s.4(1)b | K0723-08 | | |
| | Volume 2:3 | OCT 1992 | p.10 |
| s.5(1) | K0404-05 | | |
| | Volume 2:2 | JUL 1992 | p.16 |
| | K0916-14 | | |
| | Volume 2:3 | OCT 1992 | p.17 |
| s.6(1) | J1128-06 | | |
| | Volume 2:1 | APR 1992 | p.27 |
| | J1205-16 | | |
| | Volume 2:1 | APR 1992 | p.28 |
| | K0808-26 | | |
| | Volume 2:3 | OCT 1992 | p.21 |
| s.6(1)(a) | J0106-11 | | |
| | Volume 2:1 | APR 1992 | p.25 |
| s.6(1)(c) | J0822-15 | | |
| | Volume 2:1 | APR 1992 | p.26 |
| s.6(2) | J0822-15 | | |
| | Volume 2:1 | APR 1992 | p.26 |
| | J1205-16 | | |
| | Volume 2:1 | APR 1992 | p.28 |
| | K0808-26 | | |
| | Volume 2:3 | OCT 1992 | p.21 |
| s.8(10) | K1006-20 | | |
| | Volume 2:3 | OCT 1992 | p.12 |
| s.10(1) | J0106-11 | | |
| | Volume 2:1 | APR 1992 | p.25 |
| s.11(2a) | K0130-03 | | |
| | Volume 2:1 | APR 1992 | p.24 |
| s.12(1)(b) | K0818-28 | | |
| | Volume 2:3 | OCT 1992 | p.15 |
| s.13(1) | J1227-12 | | |
| | Volume 2:1 | APR 1992 | p.22 |
| | K0130-03 | | |
| | Volume 2:1 | APR 1992 | p.24 |
| | K0630-29 | | |
| | Volume 2:3 | OCT 1992 | p.14 |
| | K1006-17 | | |
| | Volume 2:2 | JUL 1992 | p.14 |

CUMULATIVE INDEX

Ontario Regulation 441, cont'd

| | | | |
|-------------|------------|----------|------|
| s.13(1)(a) | K0208-02 | | |
| | Volume 2:1 | APR 1992 | p.15 |
| s.13(2) | K0723-08 | | |
| | Volume 2:3 | OCT 1992 | p.10 |
| | K1006-17 | | |
| | Volume 2:2 | JUL 1992 | p. |
| s.13(2)1(i) | J1205-24 | | |
| | Volume 2:2 | JUL 1992 | p. |
| s.13(2)11c | K0130-03 | | |
| | Volume 2:1 | APR 1992 | p.24 |
| s.13(2)12 | J1205-21 | | |
| | Volume 2:1 | APR 1992 | p.21 |
| | J1227-12 | | |
| | Volume 2:1 | APR 1992 | p.22 |
| | K0630-29 | | |
| | Volume 2:3 | OCT 1992 | p.14 |
| | K0723-08 | | |
| | Volume 2:3 | OCT 1992 | p.10 |
| s.13(2)21 | K0604-16 | | |
| | Volume 2:1 | APR 1992 | p.16 |
| s.13(7) | K1006-17 | | |
| | Volume 2:2 | JUL 1992 | p. |

Ontario Regulation 943, R.R.O. 1980

| | | | |
|-----------|------------|----------|------|
| s.1(2)(a) | K0227-26 | | |
| | Volume 2:1 | APR 1992 | p.32 |
| s.1(2)(f) | K0227-26 | | |
| | Volume 2:1 | APR 1992 | p.32 |

Vocational Rehabilitation Services Act, R.S.O. 1980, c.525

| | | | |
|--------|------------|----------|------|
| s.1(b) | J0117-17 | | |
| | Volume 2:1 | APR 1992 | p.31 |
| | K0215-21 | | |
| | Volume 2:2 | JUL 1992 | p.27 |

Vocational Rehabilitation Services Act, cont'd

| | | | |
|---------|------------|----------|------|
| s.6 | G1006-18R | | |
| | Volume 2:1 | APR 1992 | p.32 |
| s.9(a) | J0117-17 | | |
| | Volume 2:1 | APR 1992 | p.31 |
| s.9(b) | J0117-17 | | |
| | Volume 2:1 | APR 1992 | p.31 |
| s.9(c) | J0117-17 | | |
| | Volume 2:1 | APR 1992 | p.31 |
| | J0621-15 | | |
| | Volume 2:1 | APR 1992 | p.35 |
| | J0820-10 | | |
| | Volume 2:1 | APR 1992 | p.34 |
| s.9(d) | J0621-15 | | |
| | Volume 2:1 | APR 1992 | p.35 |
| | J0820-10 | | |
| | Volume 2:1 | APR 1992 | p.34 |
| s.9(e) | J0820-10 | | |
| | Volume 2:1 | APR 1992 | p.34 |
| s.10(1) | K0110-15 | | |
| | Volume 2:2 | JUL 1992 | p.26 |

REFERENCES TO MANUALS

Family Benefits Policy and Procedural Guidelines Manual

| | | | |
|-----------|------------|----------|-----|
| Index #12 | K0129-32 | | |
| | Volume 2:1 | APR 1992 | p.6 |
| Index #17 | J0230-08 | | |
| | Volume 2:2 | JUL 1992 | p.5 |
| Index #44 | K0923-31 | | |
| | Volume 2:3 | OCT 1992 | p.5 |
| Index #45 | K0825-45 | | |
| | Volume 2:2 | OCT 1992 | p.5 |

SUMMARIES OF DECISIONS

Family Benefits Policy and Procedures Manual

cont'd

Index #53 s.4.0

K0422-08

Volume 2:2 JUL 1992 p.5

Index #64

K0426-03

Volume 2:2 JUL 1992 p.10

K0805-02

Volume 2:2 JUL 1992 p.11

Index #76, Parental Relief

K0825-30

Volume 2:2 JUL 1992 p.7

Index #76, Appendix 1

K0501-19

Volume 2:2 JUL 1992 p.7

General Welfare Policy Guidelines

GW-0303-03

J1112-12

Volume 2:1 APR 1992 p.19

GW-0304-02

J0106-11

Volume 2:1 APR 1992 p.25

GW-0405-07

K0818-28

Volume 2:3 OCT 1992 p.15

Vocational Rehabilitation

VR-0303-04

K0215-21

Volume 2:2 JUL 1992 p.27

DEFINITIONS

"absent"

J0214-23

Volume 2:1 APR 1992 p.25

"beneficiary"

K0805-02

Volume 2:2 JUL 1992 p.11

"dependant"

K0326-19

Volume 2:3 OCT 1992 p.11

"dependent adult"

K0721-32

Volume 2:2 JUL 1992 p.24

K0721-33

Volume 2:2 JUL 1992 p.24

"foster child"

J1127-27

Volume 2:1 APR 1992 p.17

"incur"

J1108-17

Volume 2:2 JUL 1992 p.9

"maintenance"

K0723-08

Volume 2:3 OCT 1992 p.10

"on behalf of"

J1205-21

Volume 2:1 APR 1992 p.21

J1227-12

Volume 2:1 APR 1992 p.22

"payment"

K0604-16

Volume 2:1 APR 1992 p.16

K0630-29

Volume 2:3 OCT 1992 p.14

"person in need"

K0630-29

Volume 2:3 OCT 1992 p.14

"physical assistance"

K0912-10

Volume 2:3 OCT 1992 p.9

"principal residence"

K0116-13

Volume 2:2 JUL 1992 p.15

"reasonable"

J0920-06

Volume 2:1 APR 1992 p.18

"recipient"

K0426-03

Volume 2:2 JUL 1992 p.10

K0805-02

Volume 2:2 JUL 1992 p.11

"self-employed"

K0819-16

Volume 2:2 JUL 1992 p.21

"shelter"

K0818-28

Volume 2:3 OCT 1992 p.15

"vocational rehabilitation"

K0215-21

Volume 2:2 JUL 1992 p.27

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**SOCIAL
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**SUMMARIES OF
DECISIONS**

Volume 2, Number 4

January 1993

This issue includes summaries of cases
heard during 1992.

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Please consult the full text of the decisions for complete information.

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Summaries of Decisions is a collection of summaries of selected decisions of the Board. It is published four times per year and is distributed free of charge. Instructions for obtaining copies of the decisions summarized in each issue appear on the last page of this publication.

ORGANIZATION

This publication is divided into three parts. Part I contains summaries of decisions that relate to the Family Benefits Act. Part II contains summaries of decisions relating to the General Welfare Assistance Act, and Part III contains summaries of decisions relating to the Vocational Rehabilitation Services Act.

Each decision summarized in this publication is assigned a number of different index terms which reflect its content. The summaries appear under the one heading which best expresses the most noteworthy issue under discussion in each decision. This heading is in **BOLD** type at the beginning of each summary. These headings are arranged in alphabetical order within Part I, Part II, and Part III.

Other index terms which apply to a decision are listed separately to provide a further indicator of content.

Example:

CATEGORICAL ELIGIBILITY

**OTHER INDEX TERMS: JOINT CUSTODY; RECONSIDERATIONS;
SINGLE PARENT WITH DEPENDENT CHILDREN**

FILE NUMBERS

Each decision is identified by an alphanumeric File Number which appears on the summary in **BOLD** type. This number should be used to identify SARB decisions or to order copies. All decisions from Hearings on Reconsideration have the letter R added to the end.

HOW TO USE THIS PUBLICATION

Example:

File Number: F0927-16R

DATE OF HEARING

This date provides an indicator of the age of the decision.

THE SUMMARIES

Each summary is a brief statement of the most important facts of the decision and of the findings of the Board. It is not a guide to the arguments presented by the parties or to the Board's reasoning and analysis. For full insight into these matters readers must consult the full text of the decision. Instructions for obtaining copies of decisions appear on the last page of this publication.

The disposition of the case, the number of pages in the full-text version of the decision, and the language in which the decision was written appear as the last sentence in the summary. Certain decisions have both an English and French language version available.

Example:

Appeal denied. (16 pp English; or 18 pp French)

REFERENCES

These references are to documents and authorities considered in and commented on in some detail by the Board in its findings. They are further indicators of the relevance of the decision. The list may include, in this order: federal and provincial statutes, regulations, cases, books, treatises and manuals. Terms whose meanings are discussed in a significant way appear in quotation marks at the end of the list.

Example:

General Welfare Assistance Act s.7(1); Re Richardson and the Commissioner of Metropolitan Toronto Department of Social Services (1988), 46 O.R. (2d) 63; "reside"

CUMULATIVE INDEX

A cumulative index to this publication is included with each issue. Use it to find summaries of decisions on specific subjects of interest to you.

References to summaries in the current issue are integrated with references from preceding issues in this list. Therefore, the most recent index can also be used to find decisions summarized in previous issues. KEEP YOUR BACK ISSUES FOR FUTURE REFERENCE. At the beginning of each volume we will begin a new index.

The cumulative index is divided into the same three parts as the rest of the publication. Part I of the index refers to the Family Benefits Act. Part II refers to the General Welfare Assistance Act, and Part III to the Vocational Rehabilitation Services Act.

The index is arranged in alphabetical order by subject within each of the Parts. Each decision appears under several different index terms to provide a detailed guide to its content. Note that headings are of many different types. Factual, procedural, and conceptual terms are used and the names of statutes or programs may also appear as index terms.

Example:

| | |
|--|--------------|
| DRUG BENEFIT | (factual) |
| EXTENSION OF TIME | (procedural) |
| ONUS | (conceptual) |
| <u>CANADIAN CHARTER OF RIGHTS AND FREEDOMS</u> | (statute) |
| S.T.E.P. | (program) |

HOW TO USE THIS PUBLICATION

The index terms are upper case. The line below shows the File Numbers of all of the decisions which contain information on these subjects.

Example:

EXTENSION OF TIME

H0321-05

Volume 2:3 OCT 1992 p.5

Information under the File Number shows where that particular summary originally appeared in our publication. The issue number, and issue date and page number are provided.

PART I

DECISIONS UNDER THE
FAMILY BENEFITS ACT

CO-RESIDENCE

OTHER INDEX TERMS: ECONOMIC CONTRIBUTION; OVERPAYMENTS

File Number: K0927-21

Date of Hearing: March 18, 1992

The Recipient was a mother with two dependent children. One of them had special needs which required frequent appointments with doctors and community agencies. The distance, number of appointments, and behaviour problems of the child meant that using public transportation was not practical. The Recipient had to rely on others for transportation.

The Recipient's co-resident had previously owned a car but had declared bankruptcy and the car was repossessed. The Recipient was therefore without transportation for four months. The co-resident later received a lump sum of money from the Workers' Compensation Board and gave the Recipient the money to buy a car with it. The ownership was put in the Recipient's name because the co-resident, as a bankrupt, could own no assets. He saw the car as a gift to her. The Director determined that the car was

an economic contribution in an amount in excess of the Recipient's entitlement.

The purpose of the legislation is to provide for persons in need and an allowance is considered to be an income of last resort. The fact that a car is usually exempt as a liquid asset is immaterial. Since the co-resident was willing and able to contribute toward the Recipient's material needs, the Board concluded that the provision of a motor vehicle by the co-resident was an economic contribution received by the Recipient. **Appeal denied. Decision of the Director affirmed.** (8 pp; English)

REFERENCES: O.Reg 318 s.5(b)(ii); Re: Wuziuk and Executive Director of Social Services (1980), 109 D.L.R. (3d) 343 (Man. C.A.); Family Benefits Policy and Procedural Guidelines Manual, Index #11A■

DONATIONS

OTHER INDEX TERMS: FOSTER PARENTS AND CHILDREN; TRUSTS

File Number: K1023-01

Date of Hearing: April 22, 1992

The Recipient was receiving a foster parent allowance for her orphaned niece. On her own, the Recipient became aware of an estate administered by a local trust company which provided funds for orphaned girls. She applied on behalf of her niece and began to receive monthly payments. The Recipient's position was that these payments were received from an unrelated estate and should be

FAMILY BENEFITS ACT

considered donations from a charitable organization.

The Recipient's foster parents allowance and other benefits were cancelled on the grounds that her income was greater than her budgetary needs. The Director submitted that the Recipient was receiving payments from an estate, and that an estate is not a religious, charitable or benevolent organization. Furthermore, the payments were ongoing and were made specifically for the "support, maintenance and education of the child". The Director argued that the intent of the legislation is to allow small, irregular donations as opposed to ongoing support.

In the Board's opinion, s.13(2)22 does not set parameters on the amount or frequency of the donations, and the use of the plural further suggests that they can be multiple. Sections 13(2)13a through 13(2)43 form a list of separate and independent payments which are to be excluded in whole or in part as income; the concepts and parameters in one subsection cannot be read into another subsection unless specifically stated.

The Board accepted the Recipient's position that the estate had a clearly enunciated charitable and benevolent purpose, which was a combination of the relief of poverty and the advancement of education. The trust did not specify individual beneficiaries and was therefore a charitable trust, not a private trust. Finally, there was no relationship between the foster child and the person who set up the estate. The Board concluded that the estate was a charitable

trust and private charity.

Can a charitable trust or private charity be considered a "charitable organization"? The term "charitable organization" is not defined in the legislation. After examining a number of dictionary definitions, the Board concluded that the estate carried out the same function as a charitable organization, even though it did not receive contributions from the public, as do many charities. **Appeal granted. Decision of the Director rescinded.** (11 pp; English)

REFERENCES: O.Reg. 318 s.13(2)22; Commissioners of Special Income Tax v. Pemsel [1891], A.C. 583; "charitable organization"■

DAMAGES OR COMPENSATION FOR PAIN AND SUFFERING

File Number: K1017-11

Date of Hearing: July 7, 1992

The issue in this appeal was whether money received by the Recipient from a lawsuit against her ex-spouse was given in order to compensate for pain and suffering.

The Recipient testified that she and her children had been harassed by her spouse for several years. After the couple were separated, the harassment continued. The husband made very serious accusations about the Recipient's sexual conduct. She then sued him for slander and was awarded damages in the amount of

\$2,500.

The Recipient and her children were under a great deal of emotional distress because of these accusations. This was supported by a letter from a psychiatrist and one from Children's Services. The Recipient's counsel submitted that the award was in the nature of damages for pain and suffering and was made to compensate her for the malicious nature of the statements made by her spouse.

The Director's spokesperson argued that "damages" should include only the physical and not the emotional, and that pain and suffering is the result of physical injury, not emotional trauma. The Board noted that the legislation refers to pain and suffering in general and does not limit it to physical injury. The Board concluded that this award for pain and suffering fell within the exception to the definition of income set out in the legislation. **Appeal granted. Decision of the Director rescinded.** (6 pp; English)

REFERENCES: O.Reg. 318 s.13(2)41.i■

HANDICAPPED CHILDREN

OTHER INDEX TERMS: DISCRETION

File Number: K1216-09

Date of Hearing: June 12, 1992

The Recipient received Handicapped Children's Benefits in the amount of \$325 monthly for his son, who suffered from Aperts Syndrome and was severely

handicapped. The son had had massive surgery to add bone to his brain to allow it to grow. His hands and feet were webbed and he had spina bifida.

Because of the child's handicaps, the Recipient's wife could not take a job; however, she found some work that could be done at home. Her income from this job for one year was \$6,000. The Director therefore reduced the monthly benefit to \$150.

When determining the amount of reduction, the Director considered certain circumstances other than the Net Entitlement Chart. Specifically, he considered the fact that the handicapped child also received funds under the Special Services at Home program, and that the Recipient and his son also made use of other community programs.

However, in the opinion of the Board, the Director failed to consider all the circumstances of the Recipient, the age of the child and the extent of his handicap, as required under subsection 39(3) of O.Reg. 318.

The Board noted that the handicapped child was 12 years of age and that expenses were increasing, not decreasing, as he grew older. Moreover, the Board accepted testimony that the child continued to be severely limited in activities pertaining to normal living. Household expenses had also increased dramatically because the family had to move to a house on a quieter street, so that the child could play in safety. The Board concluded that the Director had not

FAMILY BENEFITS ACT

properly exercised his discretion. **Appeal granted. Decision of the Director rescinded.** (10 pp; English)

REFERENCES: O.Reg. 318 s.38(3)■

LIQUID ASSETS

OTHER INDEX TERMS: BLIND PERSONS; DAMAGES OR COMPENSATION; OVERPAYMENTS

File Number: K1105-20

Date of Hearing: June 3, 1992

The Recipient was blind and his wife, who was later injured in a motor vehicle accident, was permanently unemployable. When they came to Canada the Recipient had brought more than \$500,000 in capital, which he had invested in a business that went bankrupt. The Director terminated their benefits on the grounds that they did not provide complete information about the disposition of \$83,700, received as a settlement from the wife's accident.

The Recipient and his wife received the money from the insurance company in uneven amounts. In addition to the lump sum, the wife also received no-fault insurance payments for a period and when these ceased, she began to receive an annuity. Their allowable limit of liquid assets also varied from time to time. There was considerable confusion about how much money had been received, how it had been spent, and at what time. Eventually, it became clear that the Recipient had spent some money to purchase a principal residence, which the

Board then approved.

The Recipient also testified that, before the money was received, they owed large sums of money to family members and that these amounts were repaid from the insurance settlement. The written verification of these debts and payments were not persuasive. One document, for example, acknowledged that money had been loaned but did not acknowledge repayment and the Board, therefore, did not accept that note as evidence of debt. On the balance, however, the Board found that the disposal of the money was accounted for.

The Board also found problems with the calculation of the overpayment, particularly with reference to certain lump sum payments received by the Recipients from time to time. This matter was referred back to the Director for recalculation, bearing in mind that they were elderly, handicapped, and without money. **Appeal granted in part and rescinded in part.** (19 pp; English)

REFERENCES: none■

LIQUID ASSETS

OTHER INDEX TERMS: OVERPAYMENTS

File Number: K0526-10

Date of Hearing: May 22, 1992

The Recipient was married in 1951 and had four children. Although she was never divorced or legally separated she had not lived with her husband for thirty

years. Her husband died *intestate*. She was informed that, as his legal spouse, she was entitled to a portion of his estate.

She was receiving a Family Benefits allowance at the time of the division of the estate. The Recipient objected to benefiting from the estate on moral grounds and wished to release her claim to it in favour of her children. They agreed that the children would each give their mother \$5,000 in exchange for a release of any claims she had against the estate or her children.

After receiving the \$20,000 the Recipient reapplied for an allowance and was denied because her liquid assets were in excess. Later, she loaned her son \$10,700 and eventually applied for and received General Welfare Assistance. At this point she was granted a Family Benefits allowance, but the allowance was decreased to compensate for the loan to her son. The Director considered this loan to be disposal of assets for an inadequate consideration and assessed an overpayment.

The Recipient testified that she had given her son the money so that he could buy a nice home. The evidence was that the Recipient gave the money to her son without an adequate written agreement, without any assignment of an interest in real estate, and without any agreement on how the loan was to be repaid. The Board agreed with the Director. **Appeal denied. Decision of the Director affirmed.** (8 pp; English)

REFERENCES: O.Reg. 318 s.7(1)■

MOTHER WITH DEPENDENT CHILDREN

OTHER INDEX TERMS: DISCRETION; HANDICAPPED CHILDREN; HOMES, HOSPITALS, AND INSTITUTIONS, PATIENT OR RESIDENT IN

File Number: L0227-09

Date of Hearing: July 29, 1992

The Recipient received an allowance as a sole-support parent with a dependent handicapped child. She also received Handicapped Children's Benefits for her child. The child was placed with a special-care family under the supervision of a children's institution while the Recipient completed her university degree. After it became clear that the child's placement was not short term, the Director found the Recipient to be ineligible on the grounds that she no longer had a dependent child. The Director also terminated her Handicapped Children's Benefits because the length of stay with the special-care family was considered to be permanent and the child was no longer considered to reside with the Recipient.

The Recipient testified that she had formulated a career plan to finish university and train as a teacher, so that she would be able to support herself and her son in the future. Her plan was that her son would come to live with her when her education was finished. While living with the special-care family the child visited the Recipient two weekends per month and on holidays, and the Recipient maintained an apartment large enough to provide appropriate care during his visits. She also paid some money to

FAMILY BENEFITS ACT

the children's institution for his placement, paid for some clothes, and paid for her transportation to visit or pick him up.

The Board noted that the legislation does not clarify which responsibilities characterize the parent of a dependent child, except for the general phrase that the child be "supported by" the parent. In the Board's view, the term "support" in this case means demonstrated financial, nurturing, and decision-making responsibilities, as well as the recognition and assurance of long-term commitment to the expressed needs of the child. In this case, the Recipient had not relinquished any of her parental responsibilities for her child although they were not together. She continued to be in close contact, to monitor his condition and to make decisions about his program. Her participation in and control of his life remained significant.

Moreover, although residence is often considered to be a demonstrable form of support, the legislation does not require a child to be in residence with the parent. The child was not with his mother on a day-to-day basis in this case but they did spend time together on a regular basis. In the Board's view, her sense of responsibility for her child was uninterrupted.

At the time of the Director's decision, the child had lived in the special-care home for ten months and had ten more months remaining before his return to his mother. In light of the fact that the Recipient had already received an allowance for ten

years and that she intended to support her child for many years in the future, this twenty-month period was not considered by the Board to be long term. The Board concluded that the Recipient's care for her son was such that continuous residence as a demonstrable form of "support" was less heavily weighted in this case than it might ordinarily be.

Eligibility for Handicapped Children's Benefits, however, does require that the dependent handicapped child reside with the Recipient. The Board therefore found that the Recipient was not eligible for this benefit. **Appeal granted; Decision of the Director concerning eligibility for a Family Benefits allowance rescinded. Decision of the Director concerning the Handicapped Children's Benefit affirmed.** (18 pp; English)

REFERENCES: Family Benefits Act s.1(f); O.Reg. 318 s.28(2), s.32(2); Roncarelli v. Duplessis, [1959] S.C.R. 122; Family Benefits Policy and Procedural Guidelines Manual, 0202-04, 0404-05; "supported by"■

PAYMENTS RECEIVED

File Number: L0227-15

Date of Hearing: August 5, 1992

The Recipient was a single, disabled person. He resided in Ontario Housing Corporation accommodations and worked as a security tenant for the corporation. He was compensated through rent-free accommodations and modest earnings, which averaged \$30 per month. The

Director conducted periodic reviews of the Recipient's file when statements of earnings were received, resulting in adjustments to the level of entitlement from time to time. An overpayment for \$560 was assessed. The Recipient argued that the Director had overestimated his actual earnings and that the overpayment was higher than it should be.

The Recipient was compensated for his work in the form of rent-free accommodation as well as by salary. The Board considers a rent allowance to be a "payment in kind". When combined with salary, the Recipient's monthly compensation package totalled \$140 per month and was therefore exempt from the earnings charge. After recalculating the amount of the overpayment, the Board determined that the overpayment totalled \$108. **Appeal granted in part. Decision of the Director rescinded in part.** (9 pp; English)

REFERENCES: O.Reg. 318, s.13(1)a■

REPAIRS

File Number: K0812-20

Date of Hearing: July 29, 1992

The Recipient was a permanently unemployable person who resided in a rural area. When his well went dry, the Director agreed to provide trucks of water as an interim measure, but advised the family that they could not provide money to pay for the digging of a new well. The family was also asked to find out whether

the lack of water was related to the well being dry or to a plumbing problem, in which case assistance could be provided.

At a later date, while the Applicant was hospitalized, his spouse contracted, without the approval of the Director, to have work done to improve the water system. The work consisted of backhoe work, tile work, and plumbing work to connect the well to the pump.

The Applicant submitted that the Director should pay for this work because they had merely dug a new hole next to the existing well and connected the two.

The Director argued that excavating and laying pipes and materials in order to extract water constitutes digging a well and that the Recipient had therefore had a new well dug without authorization. The Director has authority only to approve repairs and to make certain that water is provided.

The issues before the Board were whether a new well had been dug, whether the Director should pay for a new well, and whether any of the costs associated with the water problem should be paid by the Director.

In the Board's opinion, the work done by the backhoe was considered to be digging a well, and the Director was not required to pay for this. However, the Board found that the piping and plumbing associated with the work were repairs to the premises that permitted the Recipient to continue residing in his home, and that such repairs would ordinarily be approved

FAMILY BENEFITS ACT

were they not connected to the digging of a well. Appeal granted in part. Decision of the Director rescinded in part. (9 pp; English)

REFERENCES: O.Reg 318 s.29(1), s.29(2)(b); "digging a well" ■

SPOUSE

OTHER INDEX TERMS: EVIDENCE; JURISDICTIONAL ISSUES; PUTATIVE FATHER; RECONSIDERATIONS

File Number: K0320-03R

Date of Hearing: June 10, 1992

The Recipient was granted an allowance as a sole-support parent. The Director later established an overpayment on the basis that the Recipient had, for a period of time, resided in a spousal relationship with A., the father of her child. The Board rescinded the Director's decision on the grounds that the Recipient was not living with her spouse. The Director requested a reconsideration hearing.

The legislation provides that Recipients are ineligible if they are "living with" another person who is their "spouse". Therefore, the first issue before the Board was whether A. was the Recipient's spouse.

According to the legislation, a person who has an obligation to support a recipient or her dependent children under the Family Law Act, 1986 is considered to be a

spouse. The Family Law Act, 1986 provides that "every parent has an obligation to provide support... for his or her unmarried child who is a minor...". In most cases, paternity is admitted; however, in this case it was not. In order to interpret the Family Benefits Act, The Board concluded that it had jurisdiction to determine whether A. was a parent under this statute.

In a later court action between the Recipient and A., A. had admitted paternity and agreed to pay child support. The next question before the panel was whether the Board could consider this evidence in coming to its decision.

The court order in question indicated that the admission of paternity was valid for the purpose of that particular court order alone. Section 8(1)(vi) of the Children's Law Reform Act, however, provides that there is a presumption of paternity where a person has been found by a court of competent jurisdiction to be the father of a child "in his lifetime". The Board concluded that this presumption under the Children's Law Reform Act could be used in other situations. Moreover, since there was no case law about whether a finding of paternity in a person's lifetime applies only from that time forward, the Board adopted the common sense approach and concluded that a finding of paternity means that the person was a parent from the time of the child's birth. The Board therefore found that it could consider the court order as evidence.

In response to an ancillary argument, the Board also concluded that because A. was

the child's natural parent, it was not necessary for him to show a settled intention to accept the Recipient's child as his own in order to be considered "a parent". On the basis of all the evidence, the Board found that A. was a parent within the meaning of the Family Law Reform Act and was therefore the Recipient's spouse because he had an obligation to support the Recipient's child.

The second issue was whether the Recipient was "living with" her spouse during the period in question. Counsel for the Director submitted that because A. had been found to be a spouse, the issue was one of residence alone. Counsel for the Recipient argued that the Board must look at the quality and type of relationship that the couple had; otherwise, they could be considered to be co-residents.

In the view of the Board, the words "living with" should not be interpreted to mean that a couple simply reside in the same dwelling place. While a sexual or conjugal relationship is not relevant to this question, economic factors are relevant. In this case, the parties' economic relationship was not at arm's length since A. paid for shelter, food, some of the baby's clothing, and some recreation. The nature of their relationship should also be considered because it relates to the issue of the amount of sharing. They shared meals and meal preparation; they shared all the common areas of the house, as well as a bedroom; and they shared each other's company by spending time together and going out together. After considering the

evidence, the Board concluded that the couple shared the house and had a living arrangement amounting to "living with" each other. **Original decision of the Board rescinded. Decision of the Director affirmed.** (16 pp; English)

REFERENCES: Children's Law Reform Act 1.1(1), s.8(1)(vi); Family Law Act, 1986, s.31(1), s.33(7); O.Reg. 318 s.1(1)(d)(iii); Sayer v. Rollin (1980), 16 R.F.L. (2d) 289; Scrubbs v. Hackett (1987), 6 R.F.L. (3d) 275; "child", "cohabitation", "living with", "parent", "spouse"■

VOCATIONAL REHABILITATION SERVICES

OTHER INDEX TERMS: PERMANENTLY UNEMPLOYABLE PERSON

File Number: K0812-24

Date of Hearing: March 4, 1992

The Applicant was married, had dependent children, and suffered from sciatica, manic depressive disorder, and alcoholism. While upgrading his education through Vocational Rehabilitation Services, he received an allowance under s.2(6) of O.Reg. 318. After several months of study, the Applicant could not continue to attend classes because of back pain and his Vocational Rehabilitation Services were discontinued. Consequently, he was no longer eligible for a Family Benefits allowance under s.2(6), and the Applicant applied for an allowance as a permanently unemployable person.

FAMILY BENEFITS ACT

Before a decision on the Applicant's eligibility for Family Benefits had been made, he was accepted into a correspondence course program and his Vocational Rehabilitation Services were reinstated. His Family Benefits allowance under s.2(6) was also reinstated. The Director later decided to refuse an allowance as a permanently unemployable person. The Applicant appealed this decision, stating that the security of a disability pension would improve his progress in his studies.

The issue before the Board was whether the Applicant was eligible as a permanently unemployable person. The Board found that the Applicant met the definition of "permanently unemployable person", however the legislation specifically states that a recipient of Vocational Rehabilitation Services is ineligible to receive benefits as a permanently unemployable person.

In the Board's view, an excellent effort had been made to develop an appropriate educational program for the Applicant, whose continued progress could be jeopardized by medical factors at any time. If the Applicant became unable to continue his studies because of medical problems, the Board's opinion was that there was a high probability of eligibility for Family Benefits. The Board ordered that he be considered for eligibility as a permanently unemployable person as quickly as possible if his Vocational Rehabilitation Services were to be cancelled at any time. **Appeal denied.** (10 pp; English)

REFERENCES: O.Reg. 318 s.2(5)(c), s.2(6)■

DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

AGE

OTHER INDEX TERMS: CANADIAN CHARTER OF RIGHTS AND FREEDOMS; REFUGEES; SPECIAL CIRCUMSTANCES

File Number: K0903-22

Date of Hearing: May 7, 1992

The Recipient fled her home country using a false passport that showed her year of birth as 1973. She arrived in Canada and claimed refugee status in her own name but using the false birth date. She applied for General Welfare Assistance using the false birth date, which was supported by her immigration documents.

The Recipient later admitted that she was born in 1976. The Administrator cancelled her assistance on the basis that she was 15 years old and was therefore not eligible in her own right. The issue before the Board was whether she was ineligible because of her age.

The Administrator's position was that the

SUMMARIES OF DECISIONS

legislation clearly does not provide for eligibility for people who are not yet 16 years old. The Recipient's legal representative submitted that the legislation does not preclude eligibility for those under 16 years, and that she should be granted assistance because her situation amounts to "special circumstances".

The primary statement of entitlement and eligibility for General Welfare Assistance is found in s.7 of the Act. Section 7(1) provides assistance as of right to people in need. Section 7(2) provides discretionary assistance to eligible people who are not in need. In order to be entitled under s.7(1) the Recipient must be a "person in need", which is defined in s.1(2) of O.Reg. 441. The Recipient fit within the definition of s.1(2)(c) and possibly within 1(2)(a). Moreover, she met the financial requirements of the definition.

In the Board's opinion, section 11(1) is relevant to the Recipient's situation. It entitles those who are at least 16 years old, or who are the head of a family. The Recipient was neither. Section 11(1), however, is affected by subsection (5) and sections 3, 5 and 6. The Recipient's legal representative submitted that s.6(4) made the Recipient eligible. The Board, however, was unable to accept this submission. In the Board's view, s.6(4) limits entitlement to assistance rather than expanding it. It is not a category of eligibility for employable people under the age of 18 who have special circumstances. Rather, it creates an additional requirement for employable 16 and 17

year olds, who are made ineligible unless they have an absent spouse or special circumstances.

Relying on the case of Kerr, the Recipient's legal representative argued that the Recipient could be found eligible under s.7(2). In the Board's opinion, even if the Kerr decision were given the most favourable interpretation, the Board must still ask whether the ages established in the legislation are fundamental to the scheme. In the view of the Board, they are. **Appeal denied. Decision of the Administrator affirmed.** (14 pp; English)

REFERENCES: General Welfare Assistance Act s.7(1), s.7(2), s.14; O.Reg. 441 s.6(4); Kerr v. Metropolitan Toronto Department of Social Services, General Manager (1991), 4 O.R. (3d) 430 (Div. Ct.)■

ASSIGNMENT

File Number: K1212-12

Date of Hearing: July 31, 1992

The Recipient had applied for a disability pension from the Canada Pension Plan. He then applied for General Welfare Assistance and was granted assistance as an unemployable person. He signed a form authorizing the Canada Pension Plan to reimburse General Welfare for any assistance that it had provided.

The Recipient was then notified that he had been granted a disability pension from the Canada Pension Plan. The first

GENERAL WELFARE ASSISTANCE ACT

payment included a retroactive payment. Because of the Recipient's assignment, the Canada Pension Plan sent only \$68 of the first payment to him. The Recipient disagreed and expressed concern that he had been forced to sign the assignment. In the Board's view, however, the legislation authorizes the Administrator to make the assignment a condition of receiving assistance.

The Board found that the Administrator held a valid assignment from the Recipient and that General Welfare was entitled to recover money from the Recipient's first Canada Pension Plan payment. In the Board's view, the legislation makes it clear that General Welfare Assistance is meant to provide help only when people have no alternative means of meeting their financial needs. If people have other sources of income, they must pursue them. The Recipient met this requirement by applying for the disability pension from Canada Pension Plan. **Appeal denied.** Decision of the Director affirmed. (8 pp; English)

REFERENCES: O.Reg. 441 s.4■

DISCHARGE ALLOWANCE

OTHER INDEX TERMS: APPLICATIONS; EMERGENCY ASSISTANCE; SPECIAL ASSISTANCE

File Number: K0310-09

Date of Hearing: August 20, 1991

The Applicant had been an inmate in a federal correctional institution. He was later transferred to a halfway house. He then began to attend university and obtained part-time employment. On his release from the halfway house he applied for one-time assistance and a discharge allowance because he did not have enough money to establish himself in the community.

The application was made on Form 1A, which is used for applications for emergency assistance. No information about the Applicant's attendance at university was recorded on this form, although the Applicant gave sworn testimony that he had provided this information. He was given an amount to cover only his last month's rent and moving expenses; the basis on which this amount was granted was not clarified.

Following a second meeting, the Administrator denied further assistance on the grounds that the Applicant was a full-time student enrolled in university, arguing that an applicant must be eligible for general assistance before receiving a discharge allowance.

The nature of the payment made to the Recipient was disputed at the hearing. The Administrator argued that the payment made to the Applicant was emergency assistance paid under general assistance. At the hearing, however, the Administrator advanced the proposition that the payment had actually been issued as a discharge allowance. In the Board's opinion, the evidence did not support this proposition. The documentary evidence

suggested that the payment made to the Applicant was, in fact, special assistance, not general assistance or emergency assistance. The remaining issue before the Board was whether the Applicant was eligible for a discharge allowance.

At the hearing, the Applicant stated that he had wanted only a discharge allowance, not ongoing general assistance. The Administrator submitted that, because s.13a(1) of O.Reg. 441 refers to "a recipient", a discharge allowance cannot be paid unless an Applicant is eligible for general assistance. Section 13a(1), however, refers only to "assistance". In the Board's opinion, "assistance" may refer to any class of assistance, not general assistance alone.

The Administrator further argued that the words "there shall be paid to the recipient, addition to the amount of general assistance computed in accordance with subsection 11(1) ..." suggest that a person must be in receipt of general assistance in order to get a discharge allowance. In the opinion of the Board, the ambiguity in this legislative provision must be resolved in favour of the appellant, and the words indicate that a discharge allowance is an extra payment, not part of general assistance awarded under s.11(1).

The Board concluded that the Applicant was in receipt of special assistance when he sought a discharge allowance and that students are eligible to receive special assistance. The Board further concluded that the provision of a discharge

allowance is not conditional upon receiving or being eligible for general assistance. Appeal granted. Decision of the administrator rescinded. (19 pp; English)

REFERENCES: Interpretation Act s.10; O.Reg.441 s.1(1)(o), s.7, s.13a(1), 15(1); "recipient"■

FOSTER PARENTS AND CHILDREN

OTHER INDEX TERMS: AVAILABLE FINANCIAL RESOURCE

File Number: K1003-26

Date of Hearing: June 3, 1992

The Applicant, 20 years of age, applied for a foster parent allowance for his 12 year-old brother who had come to live with him after a traumatic incident in their mother's family. Family and Children's Services did an assessment and offered the child a voluntary placement with their agency in a foster home. This placement was refused.

The Administrator's position was that the Applicant's home was not a suitable home which could provide for the physical, social, emotional, and educational needs of the boy and that there were other community resources better suited to meeting his needs. By refusing this voluntary placement, the Applicant had refused to make use of an available financial resource.

In the Board's view, the Administrator interpreted the legislation too broadly.

GENERAL WELFARE ASSISTANCE ACT

The legislation provides that the Applicant has an obligation to realize only any financial resource. The Child and Family Services Act says that "a society" shall make the decision to place the child in a foster home, and in this case the placement was offered purely on a voluntary basis. Family and Children's Services had seen no need to intervene in the situation and the Administrator had no authority to act in loco parentis.

In the opinion of the Board, the Administrator correctly stated that the Applicant had refused to avail himself of the financial assistance offered by Family and Children's Services when he did not accept the voluntary placement. However, the administrator may refuse assistance only when the applicant is not making "reasonable efforts" to realize a financial resource. The Board found that it was not reasonable to break up the family unit in order to avoid a financial cost to the income maintenance system. **Appeal granted. Decision of the Administrator rescinded.** (7 pp; English)

REFERENCES: Child and Family Services Act, R.S.O. 1990 c.11; O.Reg. 441 s.3(3)(b); "reasonable efforts to realize a financial resource"■

PAYMENTS RECEIVED

OTHER INDEX TERMS: UNEMPLOYABLE PERSON; UNEMPLOYMENT INSURANCE

File Number: K0310-36
Date of Hearing: February 26, 1992

The Recipient was unemployable because of problems with her pregnancy. After her daughter was born the Recipient married the father, who came to live with them at a later date. Their assistance was then reduced and an overpayment calculated because the Administrator was advised that the husband was receiving Unemployment Insurance benefits. The Recipient submitted that she and her husband were not living together for the entire time period in question so she felt that his income should not be charged against her assistance.

The Board found that, because the Recipient was receiving financial assistance as a member of a family unit, the income from her husband's Unemployment Insurance benefits must be declared as family income and taken into account when determining their entitlement. **Appeal denied. Decision of the Administrator affirmed.** (7 pp; English)

REFERENCES: O.Reg. 441 s.13(2)12■

PAYMENTS RECEIVED

OTHER INDEX TERMS: ASSETS; OVERPAYMENTS

File Number: K1125-15
Date of Hearing: July 21, 1992

The Recipient received assistance as a married person with three dependent children. Her husband received a car from his brother who owned a used car dealership. The car was sold a month

SUMMARIES OF DECISIONS

later for \$1,300. The Recipient was advised that, because he had received the car as a gift, he had incurred an overpayment.

The two brothers had a written agreement governing use of the car. It was used to drive the Recipient's children to school and for other local errands. Although the husband was the registered owner of the vehicle, the car had to be returned to the lot each night. He was responsible for all expenses related to the car, such as insurance, gas, and repairs. The agreement also prohibited him from keeping the proceeds from the sale of the vehicle.

Because of the value of the gift, the Administrator determined that the vehicle was not exempt as a casual gift of small value. He argued that the gift of the vehicle should have been viewed as income in kind, received by the Recipient or her spouse.

The Board found that the conditions placed on the use of the car meant that it was neither income received by the Recipient's spouse, nor an asset of the Recipient's spouse. What the husband received in reality was the use of a vehicle which fulfilled a necessary transportation need on a restricted and temporary basis.

A vehicle is usually considered to be an asset because it can be readily converted into cash. In this case, however, the Recipient's spouse was not permitted to sell the vehicle for his own gain and did not keep the proceeds when it was, in

fact, sold. Appeal granted. Decision of the Administrator rescinded. (8 pp; English)

REFERENCES: O.Reg. 441, s.13(1)(b)■

PENSIONS AND PENSIONERS

OTHER INDEX TERMS: INCOME; PAYMENTS RECEIVED

File Number: K0826-13

Date of Hearing: March 13, 1992

The Recipient was a divorced woman who was 62 years old and had no dependent children. She received a monthly pension from her previous employment. The Administrator deemed this amount to be income and deducted it at a rate of 100 percent from her entitlement.

The Recipient testified that in order to qualify for the pension she had paid contribution arrears in the amount of \$7,562. In order to make this payment, the Recipient borrowed \$6,000 from a bank and was still repaying the loan at the time of her hearing. She argued that although she was receiving pension income, her loan repayments were directly related to this income. The question before the Board was whether her loan payments should be taken into consideration when calculating her assistance. The Board concluded that the pension payments were income and must be included in the calculation of income.

The second issue before the Board was whether the Recipient's loan payments fell

GENERAL WELFARE ASSISTANCE ACT

within the definition of "budgetary requirements". The Board noted that the legislation recognizes budgetary requirements which are related to a person's essential needs but does not recognize all of the living expenses which a person may have. Debts are not included in the calculation of budgetary requirements.

The Board concluded that the Recipient did receive her maximum entitlement. **Appeal denied. Decision of the Administrator affirmed.** (7 pp; English)

REFERENCES: O.Reg. 441 s.13(2)2■

SELF-EMPLOYED

File Number: K0813-31

Date of Hearing: February 20, 1992

The Applicant had been a commissioned salesperson for one and a half years. He worked for an insurance company, selling insurance policies and other financial products. He was also the sole proprietor of an accounting services business which he operated on a part-time basis.

The Applicant outlined the insurance company's arrangement with commissioned salespersons and his involvement with his accounting services business. After an extensive review of applicable case law, the Board noted that, as a commissioned salesperson, the Applicant had control over his own schedule as well as the acquisition and servicing of clients. The insurance company, however, had ultimate control

over the number and the profitability of sales.

The Board also examined whether the Applicant was subject to financial risk or loss in the business, or whether he was entitled to profits. The Applicant indicated that the only investment he had made since taking the job was to purchase a computer from the company and that his only source of income from the company was the commission on sales. The Board concluded that the Applicant did not have to risk a loss of investment or profit.

Lastly, the Board looked at the extent to which the Applicant was integrated into the company. The products for sale were supplied by the company and the non-negotiable percentage of commission was determined by the company. Both of these factors are indicative of a high level of integration. The Board concluded that, in respect to his position as a commissioned salesperson, the Applicant was not self-employed.

There was no dispute as to whether the Applicant was self-employed in regard to his accounting services business. The issue was whether the fact that this business was part time put him outside the scope of the legislation. The legislation expressly provides that even though an applicant may be a person in need on a strictly budgetary basis, a self-employed person is not eligible as a person in need.

The legislation does not define the term "self-employed". It does, however, make distinctions between levels of employment for those engaged in ordinary

employment. Therefore, in the Board's opinion, an interpretation of this term should take into account whether the business in question was minor or more substantial. It was necessary to determine whether the Applicant was willing to undertake any employment for which he was capable. The evidence indicated that he was willing; however, the Board doubted that he was able to take on more work given the constraints on his time.

The Board concluded that the Applicant was not self-employed because he was an insurance agent. Although he was self-employed in his accounting services business, the Board did not find this to be an automatic bar to eligibility for assistance. However, his circumstances made it impossible for him to make reasonable efforts to secure employment, even though he was willing to do so. **Appeal denied. Decision of the Director affirmed.** (18 pp; English)

REFERENCES: O.Reg. 441, s.1(3), s.3(3), s.3(1)(ba); Fleuty v. Orr (1906), 13 O.L.R. 59 (Ont. C.A.); Montreal v. Montreal Locomotive Works Ltd., [1947] 1 D.L.R. 161 (P.C.); Stevenson Jordon and Harrison Ltd. v. MacDonald and Evans, [1951] 1 T.L.R.; "self-employed"■

SHELTER

File Number: K1223-24

Date of Hearing: September 1, 1992

The Recipient received assistance as an employable person. He moved into an apartment where his monthly rent was

\$749. Of this amount, a portion was charged for basic rent and a portion for furniture rental. The Recipient's assistance was therefore reduced to reflect the cost of basic rent alone.

The Recipient argued that the amount paid for furniture rental should be considered as part of his shelter costs. The Administrator submitted that "shelter costs" cover the costs of a dwelling place or building only, and not the contents in it. The Recipient's legal representative suggested that the term "rent" should be interpreted so as to ensure consistency and coherence with other provincial legislation, such as the Residential Rent Regulation Act. Under this statute, the definition of "rent" is broad enough to include furniture rental payments. Moreover, the Recipient's furniture rental was included in his rent and was not optional.

The Board did not agree with the argument that the word "rent" should be interpreted broadly, as in the RRR. This statute has its own context and purpose which may or may not be relevant to the General Welfare Assistance Act.

Furniture rental charges payable to a landlord are not specifically mentioned in the definition of shelter in O.Reg. 441. Therefore, as a general rule, they are not shelter costs. However, in this case the furniture rental cost was not an optional service offered by the landlord which the Recipient might choose to purchase or not purchase. The Board concluded that the furniture rental charge was a shelter cost. **Appeal granted. Decision of the Director**

GENERAL WELFARE ASSISTANCE ACT

rescinded. (9 pp; English)

REFERENCES: Residential Rent Regulation Act s.1; O.Reg. 441 s.12(1)(b); "rent", "shelter"■

STUDENTS

OTHER INDEX TERMS: ONTARIO STUDENT ASSISTANCE PROGRAM; OVERPAYMENTS; UNEMPLOYABLE PERSON

File Number: K1119-23

Date of Hearing: May 4, 1992

The Recipient was receiving assistance as a single, employable person. As a result of a car accident, she became a person who was considered to be temporarily unemployable for a two-year period.

She then began to attend college. She received an award from the Ontario Student Assistance Program at the same time as she was receiving General Welfare Assistance. The Administrator submitted that the Recipient incurred an overpayment because she had received an O.S.A.P. grant, which included an amount for room and board. He therefore assessed an overpayment which represented board and lodging over the thirty-two-week school term.

The Recipient argued that the amount of the overpayment was calculated incorrectly because it exceeded her total O.S.A.P. grant. The Administrator argued that the calculation must be made using the amount she was eligible for rather

than the amount received.

It is the Board's view that neither argument is correct. Both arguments are based on the notion that a person who receives an O.S.A.P. grant may also be entitled to General Welfare Assistance. However, an amendment to O.Reg. 441, which came into force in October 1991, means that, in the Board's opinion, the Recipient was not entitled to any welfare assistance at all. Section 6(2) provides that a person is not eligible to receive General Welfare Assistance if he or she is eligible to receive an O.S.A.P. grant (as opposed to an O.S.A.P. loan). Prior to October 1991, it might have been argued that the Recipient was still eligible because she had qualified for assistance as a medically unemployable person rather than as a student and it was not clear at that time that medically unemployable persons must meet the requirements of s.6 in order to be eligible. However, the new amendment, s.3(1b), clearly applies to both employable and unemployable persons. The Administrator had therefore provided the Recipient with assistance to which she was not entitled.

The next issue before the Board was whether these monies were recoverable. After reviewing the documentary evidence, it became clear that the Recipient had provided the Administrator with the required information in a timely manner. The Administrator, who relied on an outdated section of the General Welfare Policy Guidelines rather than on the legislation itself, ought to have realized that the Recipient was no longer eligible at an early date. The Board

concluded that the overpayment arose entirely as a result of an error in law on the part of the Administrator and could not be recovered. **Appeal granted in part. Decision of the Administrator rescinded in part.** (12 pp; English)

REFERENCES: O.Reg. 441 s.3(1b), s.6(2)■

PART III

**DECISIONS UNDER THE
VOCATIONAL REHABILITATION
SERVICES ACT**

DISABLED PERSONS

File Number: K1006-28
Date of Hearing: April 30, 1992

The Applicant had one child. She later gave birth prematurely to twin girls. Immediately after the birth, there was a tragic death in the Applicant's family. The twins were placed on life support and had to remain in hospital for several weeks. After they were brought home, the Applicant and her husband found it extremely difficult to care for the infants. The husband committed suicide. The twins were diagnosed as having cerebral palsy.

The Applicant, unable to cope with the

situation, began regular psychotherapy. Her condition was described as an "adjustment disorder with mixed disturbance of emotions and conduct". All three of her children were taken into the care of the Children's Aid Society for a two-year period. The children were later returned to her, subject to the continuing supervision of the Children's Aid Society. Her doctor reported that her prognosis was "good with the passing of time, the development of her children, and the capacity to assume responsibility for their needs". The Applicant requested van modifications including a wheelchair lift, which were needed to transport the twins and their wheelchairs to their many medical appointments. The issue before the Board was whether the Applicant's mental impairment prevented her from "pursuing regularly any substantially gainful occupation".

The legislation places housekeeping and homemaking in this category of occupation, and the Applicant had applied as a homemaker. The Applicant's position was that she was unable to continue to function at optimum capacity without van modifications. Her doctor strongly supported this position. The Director argued that van modifications fall into the category of "devices designed to support a part of the body", and that because the Applicant herself was not dependent on such devices, she was not eligible.

In the Board's opinion, although the focus of eligibility must be on the Applicant, her children's needs were relevant to her ability to function as a homemaker. In

VOCATIONAL REHABILITATION SERVICES ACT

this case, the doctor's reports established that the Applicant's mental condition was affected by the lack of adequate transportation for her children. **Appeal granted. Decision of the Director rescinded.** (10 pp; English)

REFERENCES: Voc. Rehab. Services Act s.1(b), O.Reg. 943 s.1(2)(d) ■

DISABLED PERSONS

File Number: L0214-10

Date of Hearing: August 26, 1992

The Recipient was found to be eligible for Vocational Rehabilitation Services as a disabled person; his disability was cocaine addiction. With the help of his counsellor, he established teaching as his vocational goal. He was sponsored in a university program and completed the regular Bachelor of Arts degree in English.

The Recipient testified that after completing his degree, he applied for more than one hundred jobs, without success. His criminal record made job hunting more difficult because he could not be bonded and was not eligible for jobs that involved handling money. His current goal was to finish his honours degree and work toward an advanced degree so that he could teach in university.

The spokesperson for the Director testified that VRS had agreed to provide the Recipient with an entry level education and, in this case, his B.A. was considered sufficient to enable him to find

employment. The Recipient testified that his impression was that VRS would sponsor him to the honours level. The issue before the Board was whether the type of education provided to the Recipient was sufficient to allow him to acquire an entry-level position.

In the Board's view "optimum capacity" refers to any employment at which an applicant can exercise the collective skills useful in employment settings. These skills need not derive only from formal training, but may also be informally and casually acquired. Such generic skills can be applied to a range of occupations and can be transferable among occupations.

The Board recognizes that finding employment is difficult in the current economic climate and that individuals who have broadly functional credentials or highly specialized training are needing much longer to find employment than in the past. The Recipient testified that he had not found a degree in English to be marketable; however, in the view of the Board, there is a difference between marketing a degree as such and generalizing what was learned for that degree into a set of practical, highly functional skills. The Board concluded that it was reasonable to expect that a university degree in English would enhance the Recipient's employability, and that an advanced degree would not necessarily provide more opportunities for entry-level jobs.

In the Board's opinion, the Recipient is not "incapable" of pursuing "any" occupation due to impairment. "Any"

means work of any kind that is remunerative. Vocational rehabilitation consists of preparing an individual for suitable work, a restoring or renewing of marketable skills through compensatory measures. It is generally thought to be the initiating to work, the satisfying of the impulse to work. The Board found that the Recipient had received sufficient services to allow him to begin a career path at an entry level. **Appeal denied. Decision of the Director affirmed.** (8 pp; English)

REFERENCES: Vocational Rehabilitation Services Act, s.1(b); O.Reg. 943 s.1(2); DeBoni v. Director of Vocational Rehabilitation Services (unreported; Divisional Court, May 11, 1978); Re Mroszkowski and Director of the Vocational Rehabilitation Services Branch of the Ministry of Community and Social Services for Ontario, Divisional Court, [1978] 10 O.R. (2d) 688; "optimum capacity"■

DISABLED PERSONS

OTHER INDEX TERMS: CREDIBILITY; VOCATIONALLY DISABLED

File Number: L0228-06

Date of Hearing: August 26, 1992

The Applicant applied for services in order to upgrade his education. He had a history of substance abuse and had been employed primarily as an ambulance driver and truck driver.

The Director denied services on the

grounds that the Applicant was capable of pursuing "any" gainful occupation and was therefore not a disabled person.

At the Hearing, the VRS counsellor argued that the Applicant was not vocationally handicapped because of his substance abuse. His truck-driving skills, experience, and his "D" licence opened up many employment possibilities for the Applicant, and the damage done to the Applicant because of his substance abuse was much less severe than that suffered by other clients. During the time when the Applicant was involved with substance abuse he was prevented from holding employment. However, since his rehabilitation, there was no further evidence that he suffered from an impairment that prevented him from engaging in gainful employment.

The Applicant testified that he had a pattern of work interruption caused by addictive types of behaviour. He had been obliged to leave previous jobs and had been incarcerated intermittently because of offenses related to substance abuse. At the Hearing, the Applicant showed an excellent understanding of the behavioural signals that caused him to be drawn back into substance abuse. Two letters from doctors supported the Applicant's testimony that returning to a driving-related occupation could trigger a return to previous behavioural patterns.

After hearing the testimony, the Board was convinced that a return to truck driving would jeopardize the Applicant's recovery from addictive behaviours and that because of this disability, he was not

VOCATIONAL REHABILITATION SERVICES ACT

capable of pursuing "any" gainful occupation at the time. Appeal granted. Decision of the Director rescinded. (8 pp; English)

REFERENCES: Vocational Rehabilitation Services Act, s.1(b) ■

CUMULATIVE INDEX

This index includes cases published in Volumes 2:1, 2:2, 2:3 and 2:4 of
SUMMARIES OF DECISIONS

**PART I: DECISIONS UNDER THE
FAMILY BENEFITS ACT**

ABSENT FROM ONTARIO

K0825-45
Volume 2:3 OCT 1992 p.5

AGE

K0426-03
Volume 2:2 JUL 1992 p.10

ASSIGNMENT

J0104-16
Volume 2:3 OCT 1992 p.7

AVAILABLE FINANCIAL RESOURCE

K0717-19
Volume 2:2 JUL 1992 p.13

BENEFICIARIES

K0426-03
Volume 2:2 JUL 1992 p.10
K0805-02
Volume 2:2 JUL 1992 p.11

BLIND PERSONS

K1105-20
Volume 2:4 JAN 1993 p.8

BOARD AND LODGING

K0422-08
Volume 2:2 JUL 1992 p.10

CANADA PENSION PLAN

J0104-16
Volume 2:3 OCT 1992 p.7

CO-RESIDENCE

J0816-12
Volume 2:1 APR 1992 p.10
K0919-03
Volume 2:2 JUL 1992 p.12
K0927-21
Volume 2:4 JAN 1993 p.5

CREDIBILITY

J0920-14
Volume 2:3 OCT 1992 p.10
K0717-19
Volume 2:2 JUL 1992 p.13
K0919-03
Volume 2:2 JUL 1992 p.12

**DAMAGES OR COMPENSATION FOR PAIN AND
SUFFERING**

J0230-08
Volume 2:2 JUL 1992 p.5
J1108-17
Volume 2:2 JUL 1992 p.9
K1017-11
Volume 2:4 JAN 1993 p.6
K1105-20
Volume 2:4 JAN 1993 p.8

DEAF PERSONS

J0730-04
Volume 2:1 APR 1992 p.7

DISCRETION

J0104-16
Volume 2:3 OCT 1992 p.7

CUMULATIVE INDEX

| | | |
|--------------------------|----------|------|
| K0129-32 | | |
| Volume 1:2 | APR 1992 | p.6 |
| K0501-19 | | |
| Volume 2:1 | JUL 1992 | p.7 |
| K0829-04 | | |
| Volume 2:3 | OCT 1992 | p.8 |
| K0923-31 | | |
| Volume 2:3 | OCT 1992 | p.5 |
| K1216-09 | | |
| Volume 2:4 | JAN 1993 | p.7 |
| L0227-09 | | |
| Volume 2:4 | JAN 1993 | p.9 |
| DONATIONS | | |
| K1023-01 | | |
| Volume 2:4 | JAN 1993 | p.5 |
| ECONOMIC CONTRIBUTION | | |
| K0927-21 | | |
| Volume 2:4 | JAN 1993 | p.5 |
| EDUCATIONAL INSTITUTIONS | | |
| K0520-24 | | |
| Volume 2:2 | JUL 1992 | p.8 |
| EVIDENCE | | |
| J0104-16 | | |
| Volume 2:3 | OCT 1992 | p.7 |
| J0516-12 | | |
| Volume 2:2 | JUL 1992 | p.12 |
| J0920-14 | | |
| Volume 2:3 | OCT 1992 | p.10 |
| J0920-23 | | |
| Volume 2:1 | APR 1992 | p.9 |
| K0320-03R | | |
| Volume 2:4 | JAN 1993 | p.12 |
| EXTENSION OF TIME | | |
| J0827-28 | | |
| Volume 2:1 | APR 1992 | p.13 |
| K0520-24 | | |
| Volume 2:2 | JUL 1992 | p.8 |
| K0805-02 | | |
| Volume 2:2 | JUL 1992 | p.11 |
| K0923-31 | | |
| Volume 2:3 | OCT 1992 | p.5 |
| FINANCIAL HARDSHIP | | |
| K0520-24 | | |
| Volume 2:2 | JUL 1992 | p.8 |

| | | |
|-----------------------------|----------|-----|
| FOSTER PARENTS AND CHILDREN | | |
| K1023-01 | | |
| Volume 2:4 | JAN 1993 | p.5 |

| | | |
|----------------------------|----------|-----|
| FUNERALS AND FUNERAL PLANS | | |
| K0129-32 | | |
| Volume 2:1 | APR 1992 | p.6 |

| | | |
|----------------------|----------|-----|
| HANDICAPPED CHILDREN | | |
| K0501-1 | | |
| Volume 2:2 | JUL 1992 | p.7 |
| K0825-30 | | |
| Volume 2:2 | JUL 1992 | p.7 |
| K1216-09 | | |
| Volume 2:4 | JAN 1993 | p.7 |
| L0227-09 | | |
| Volume 2:4 | JAN 1993 | p.9 |

| | | |
|--|----------|-----|
| HOMES, HOSPITALS AND INSTITUTIONS, PATIENT OR RESIDENT IN | | |
| H0208-10R | | |
| Volume 2:1 | APR 1992 | p.5 |
| K0129-32 | | |
| Volume 2:1 | APR 1992 | p.6 |
| K0923-31 | | |
| Volume 2:3 | OCT 1992 | p.5 |
| L0227-09 | | |
| Volume 2:4 | JAN 1993 | p.9 |

| | | |
|------------|----------|-----|
| INCOME | | |
| J0230-08 | | |
| Volume 2:2 | JUL 1992 | p.5 |
| J1108-17 | | |
| Volume 2:2 | JUL 1992 | p.9 |
| K0501-19 | | |
| Volume 2:2 | JUL 1992 | p.7 |

| | | |
|------------|----------|-----|
| INSURANCE | | |
| J1108-17 | | |
| Volume 2:2 | JUL 1992 | p.9 |
| K0206-16 | | |
| Volume 2:1 | APR 1992 | p.8 |

| | | |
|-----------------------|----------|------|
| JURISDICTIONAL ISSUES | | |
| J0702-08 | | |
| Volume 2:1 | APR 1992 | p.11 |
| K0320-03R | | |
| Volume 2:4 | JAN 1993 | p.11 |

| | | |
|---------------|----------|------|
| LIQUID ASSETS | | |
| J0702-08 | | |
| Volume 2:1 | APR 1992 | p.11 |

SUMMARIES OF DECISIONS

LIQUID ASSETS, cont'd

K0129-32
Volume 2:1 APR 1992 p.6
K0526-10
Volume 2:4 JAN 1993 p.8
K0829-04
Volume 2:3 OCT 1992 p.8
K1105-20
Volume 2:4 JAN 1993 p.8

MEDICAL ADVISORY BOARD

J0918-05
Volume 2:1 APR 1992 p.9

MEDICAL CONDITIONS

J0918-05
Volume 2:1 APR 1992 p.9

MORTGAGES

K0829-04
Volume 2:3 OCT 1992 p.8

MOTHER WITH DEPENDENT CHILDREN

H0208-10R
Volume 2:1 APR 1992 p.5
L0227-09
Volume 2:4 JAN 1993 p.9

ONUS

J0920-14
Volume 2:3 OCT 1992 p.10
K0919-03
Volume 2:2 JUL 1992 p.12

ONTARIO MOTORIST PROTECTION PLAN

J1108-17
Volume 2:2 JUL 1992 p.9
K0206-16
Volume 2:1 APR 1992 p.8

ORDER IN COUNCIL

J0702-08
Volume 2:1 APR 1992 p.11
K0825-30
Volume 2:2 JUL 1992 p.7

OVERPAYMENTS

J0104-16
Volume 2:3 OCT 1992 p.7

OVERPAYMENTS, cont'd

J0730-04
Volume 2:1 APR 1992 p.7
K0129-32
Volume 2:1 APR 1992 p.6
K0426-03
Volume 2:2 JUL 1992 p.10
K0526-10
Volume 2:4 JAN 1993 p.8
K0805-02
Volume 2:2 JUL 1992 p.11
K0829-04
Volume 2:3 OCT 1992 p.8
K0927-21
Volume 2:4 JAN 1993 p.5
K1105-20
Volume 2:4 JAN 1993 p.8

PAYMENTS RECEIVED

J0104-16
Volume 2:3 OCT 1992 p.7
J0730-04
Volume 2:1 APR 1992 p.7
J1108-17
Volume 2:2 JUL 1992 p.9
K0206-16
Volume 2:1 APR 1992 p.8
K0829-04
Volume 2:3 OCT 1992 p.8
L0227-15
Volume 2:4 JAN 1993 p.10

PENSIONS AND PENSIONERS

K0829-04
Volume 2:3 OCT 1992 p.8

PERMANENTLY UNEMPLOYABLE PERSON

J0516-12
Volume 2:2 JUL 1992 p.12
J0918-05
Volume 2:1 APR 1992 p.9
J0920-23
Volume 2:1 APR 1992 p.9
K0812-24
Volume 2:4 JAN 1993 p.13
K0912-10
Volume 2:3 OCT 1992 p.9

CUMULATIVE INDEX

PUTATIVE FATHER

K0320-03R
Volume 2:4 JAN 1993 p.12
K0717-19
Volume 2:2 JUL 1992 p.13

RECONSIDERATIONS

H0208-10R
Volume 2:1 APR 1992 p.5
K0320-03R
Volume 2:4 JAN 1993 p.12

REFUGEES

K0426-03
Volume 2:2 JUL 1992 p.9

RENT

K0422-08
Volume 2:2 JUL 1992 p.5

RENTALS

K0912-10
Volume 2:3 OCT 1992 p.9

REPAIRS

K0812-20
Volume 2:4 JAN 1993 p.11

SHELTER

K0912-10
Volume 2:3 OCT 1992 p.9
K0923-31
Volume 2:3 OCT 1992 p.5

SINGLE PARENT WITH DEPENDENT CHILDREN

K0520-24
Volume 2:2 JUL 1992 p.8

SPOUSE

J0816-12
Volume 2:1 APR 1992 p.10
J0920-14
Volume 2:3 OCT 1992 p.10
K0320-03R
Volume 2:4 JAN 1993 p.12
K0919-03
Volume 2:2 JUL 1992 p.12

STRUCTURED SETTLEMENTS

J0230-08
Volume 2:2 JUL 1992 p.5

SUPPORT OR MAINTENANCE PAYMENTS

K0717-19
Volume 2:2 JUL 1992 p.13

TRUSTS

J0702-08
Volume 2:1 APR 1992 p.11
J0827-28
Volume 2:1 APR 1992 p.13
K1023-01
Volume 2:4 JAN 1993 p.5

VOCATIONAL REHABILITATION SERVICES

K0812-24
Volume 2:4 JAN 1993 p.13

PART II: DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

AGE

J1206-13
Volume 2:1 APR 1992 p.14
K0903-22
Volume 2:4 JAN 1993 p.14

AGREEMENT TO REIMBURSE

K0723-08
Volume 2:3 OCT 1992 p.10

APPLICATIONS

J1206-13
Volume 2:1 APR 1992 p.14
K0310-09
Volume 2:4 JAN 1993 p.16

ASSETS

K1125-15
Volume 2:4 JAN 1993 p.18

SUMMARIES OF DECISIONS

ASSIGNMENT

K0404-05
Volume 2:2 JUL 1992 p.16
K1212-12
Volume 2:4 JAN 1993 p.15

AVAILABLE FINANCIAL RESOURCE

K0619-07
Volume 2:2 JUL 1992 p.19
K1003-26
Volume 2:4 JAN 1993 p.17

CANADIAN CHARTER OF RIGHTS AND
FREEDOMS

K0903-22
Volume 2:4 JAN 1993 p.14

CASUAL GIFTS

K0208-02
Volume 2:1 APR 1992 p.15
K0604-16
Volume 2:1 APR 1992 p.16

CONCURRING OPINIONS

J0214-23
Volume 2:1 APR 1992 p.25

CREDIBILITY

J1010-20
Volume 2:1 APR 1992 p.29
J1017-03
Volume 2:1 APR 1992 p.30
K0325-08
Volume 2:2 JUL 1992 p.22
K0326-19
Volume 2:3 OCT 1992 p.11
K0402-26
Volume 2:2 JUL 1992 p.21
K0819-16
Volume 2:2 JUL 1992 p.21

DEPENDENT ADULTS

J0822-15
Volume 2:1 APR 1992 p.26
K0326-19
Volume 2:3 OCT 1992 p.11
K0721-32
Volume 2:2 JUL 1992 p.24
K0721-33
Volume 2:2 JUL 1992 p.24

DEPENDENT CHILD

J1127-27
Volume 2:1 APR 1992 p.17

DISCHARGE ALLOWANCE

K0310-09
Volume 2:4 JAN 1993 p.16

DISCRETION

J0822-15
Volume 2:1 APR 1992 p.26
J1205-16
Volume 2:1 APR 1992 p.28
K0208-02
Volume 2:1 APR 1992 p.15
K0619-07
Volume 2:2 JUL 1992 p.19
K0721-32
Volume 2:2 JUL 1992 p.24
K0721-33
Volume 2:2 JUL 1992 p.24
K1006-20
Volume 2:3 OCT 1992 p.12

DRUG BENEFITS

K0130-03
Volume 2:1 APR 1992 p.24

EMERGENCY ASSISTANCE

K0310-09
Volume 2:4 JAN 1993 p.16
K1006-20
Volume 2:3 OCT 1992 p.12

EMPLOYABLE PERSON

J0920-06
Volume 2:1 APR 1992 p.18
J1112-12
Volume 2:1 APR 1992 p.19
K1030-05
Volume 2:3 OCT 1992 p.13

EVIDENCE

K0116-13
Volume 2:2 JUL 1992 p.15
K0320-03R
Volume 2:4 JAN 1993 p.12
K0819-16
Volume 2:2 JUL 1992 p.21

CUMULATIVE INDEX

EXTENSION OF TIME

K0402-26
Volume 2:2 JUL 1992 p.20

FAILURE TO PROVIDE INFORMATION

K0116-13
Volume 2:2 JUL 1992 p.15
K0619-07
Volume 2:2 JUL 1992 p.19

FARMS AND FARMERS

K0506-02
Volume 2:2 JUL 1992 p.17

FOSTER PARENTS AND CHILDREN

J1127-27
Volume 2:1 APR 1992 p.17
K1003-26
Volume 2:4 JAN 1993 p.17

FRAUD

K0402-26
Volume 2:2 JUL 1992 p.20

GARNISHMENT

J1205-21
Volume 2:1 APR 1992 p.21
J1205-24
Volume 2:2 JUL 1992 p.18
J1227-12
Volume 2:1 APR 1992 p.22
K0630-29
Volume 2:2 OCT 1992 p.14

HEAD OF A FAMILY

J0214-23
Volume 2:1 APR 1992 p.25

INCOME

J1205-21
Volume 2:1 APR 1992 p.21
J1227-12
Volume 2:1 APR 1992 p.22
K0130-03
Volume 2:1 APR 1992 p.24
K0208-02
Volume 2:1 APR 1992 p.15
K0604-16
Volume 2:1 APR 1992 p.16

INCOME, cont'd

K0630-29
Volume 2:3 OCT 1992 p.14
K0826-13
Volume 2:4 JAN 1993 p.19
K1006-17
Volume 2:2 JUL 1992 p.14

JOB SEARCH

J0920-06
Volume 2:1 APR 1992 p.18
J1112-12
Volume 2:1 APR 1992 p.19
K0819-16
Volume 2:2 JUL 1992 p.21

JURISDICTIONAL ISSUES

J0106-11
Volume 2:1 APR 1992 p.25
K0110-15
Volume 2:2 JUL 1992 p.26
K0320-03R
Volume 2:4 JAN 1993 p.12

LIQUID ASSETS

J0610-19
Volume 2:1 APR 1992 p.21
J0528-13
Volume 2:1 APR 1992 p.20
K0116-13
Volume 2:2 JUL 1992 p.15
K0404-05
Volume 2:2 JUL 1992 p.16
K0506-02
Volume 2:2 JUL 1992 p.17
K0916-14
Volume 2:3 OCT 1992 p.17
K1107-21
Volume 2:2 JUL 1992 p.22

MORTGAGES

K0818-28
Volume 2:3 OCT 1992 p.15

NATIVE PEOPLE

J0528-13
Volume 2:1 APR 1992 p.20
K0326-19
Volume 2:3 OCT 1992 p.11

SUMMARIES OF DECISIONS

NOTICE REQUIREMENTS

K0110-15
Volume 2:2 JUL 1992 p.26

ONTARIO STUDENT ASSISTANCE PROGRAM

J0822-15
Volume 2:1 APR 1992 p.26
K0721-32
Volume 2:2 JUL 1992 p.24
K0721-33
Volume 2:2 JUL 1992 p.24
K0808-26
Volume 2:3 OCT 1992 p.21
K1119-23
Volume 2:4 JAN 1993 p.22

ONUS

K0326-19
Volume 2:3 OCT 1992 p.11

OVERPAYMENTS

K0326-19
Volume 2:3 OCT 1992 p.11
K1119-23
Volume 2:4 JAN 1993 p.22
K1125-15
Volume 2:4 JAN 1993 p.18

PARTNERSHIPS

K0116-13
Volume 2:2 JUL 1992 p.15

PAYMENTS RECEIVED

J1205-21
Volume 2:1 APR 1992 p.21
J1205-24
Volume 2:2 JUL 1992 p.18
J1227-12
Volume 2:1 APR 1992 p.22
K0130-03
Volume 2:1 APR 1992 p.24
K0208-02
Volume 2:1 APR 1992 p.15
K0310-36
Volume 2:4 JAN 1993 p.18
K0630-29
Volume 2:3 OCT 1992 p.14
K0604-16
Volume 2:1 APR 1992 p.16

PAYMENTS RECEIVED, cont'd

K0818-28
Volume 2:3 OCT 1992 p.15
K0826-13
Volume 2:4 JAN 1993 p.19
K1006-17
Volume 2:2 JUL 1992 p.14
K1125-15
Volume 2:4 JAN 1993 p.18

PENSIONS AND PENSIONERS

K0619-07
Volume 2:2 JUL 1992 p.19
K0826-13
Volume 2:4 JAN 1993 p.19
K1030-05
Volume 2:3 OCT 1992 p.13

REFUGEES

K0402-26
Volume 2:2 JUL 1992 p.20
K0721-32
Volume 2:2 JUL 1992 p.24
K0903-22
Volume 2:4 JAN 1993 p.14
K1007-06
Volume 2:3 OCT 1992 p.19

REFUSED OR RESIGNED FROM EMPLOYMENT

K0812-19
Volume 2:3 OCT 1992 p.20

REPAIRS

K0812-20
Volume 2:4 JAN 1993 p.11

RESIDENCE

J1205-16
Volume 2:1 APR 1992 p.28
K0405-18
Volume 2:3 OCT 1992 p.21
K1007-06
Volume 2:3 OCT 1992 p.19

SELF-EMPLOYED

K0813-31
Volume 2:4 JAN 1993 p.20
K0819-16
Volume 2:2 JUL 1992 p.21
K1107-21
Volume 2:2 JUL 1992 p.22

CUMULATIVE INDEX

SHELTER

K0130-03
Volume 2:1 APR 1992 p.24
K0818-28
Volume 2:3 OCT 1992 p.15
K1223-24
Volume 2:4 JAN 1993 p.21

SPECIAL ASSISTANCE

K0310-09
Volume 2:4 JAN 1993 p.16

SPECIAL CIRCUMSTANCES

J1206-13
Volume 2:1 APR 1992 p.14
K0903-22
Volume 2:4 JAN 1993 p.14

SPONSORSHIP

K0325-08
Volume 2:2 JUL 1992 p.22

SPOUSE

J0214-23
Volume 2:1 APR 1992 p.25
K0320-03R
Volume 2:4 JAN 1993 p.12
K0721-32
Volume 2:2 JUL 1992 p.24
K0721-33
Volume 2:2 JUL 1992 p.24

STUDENTS

J0106-11
Volume 2:1 APR 1992 p.25
J0822-15
Volume 2:1 APR 1992 p.26
J1128-06
Volume 2:1 APR 1992 p.27
J1205-16
Volume 2:1 APR 1992 p.28
K0721-32
Volume 2:2 JUL 1992 p.24
K0721-33
Volume 2:2 JUL 1992 p.24
K0808-26
Volume 2:3 OCT 1992 p.21
K1119-23
Volume 2:4 JAN 1993 p.22

SUPPORT OR MAINTENANCE PAYMENTS

J1205-21
Volume 2:1 APR 1992 p.21
J1227-12
Volume 2:1 APR 1992 p.22
K0818-28
Volume 2:3 OCT 1992 p.15

TAXES

K1006-17
Volume 2:2 JUL 1992 p.14

UNEMPLOYABLE PERSON

K0310-36
Volume 2:4 JAN 1993 p.18
K1119-23
Volume 2:4 JAN 1993 p.22

UNEMPLOYMENT DUE TO CIRCUMSTANCES NOT WITHIN CONTROL

J0920-06
Volume 2:1 APR 1992 p.18
J1010-20
Volume 2:1 APR 1992 p.29
J1017-03
Volume 2:1 APR 1992 p.30
J1128-06
Volume 2:1 APR 1992 p.27

UNEMPLOYMENT INSURANCE

J1205-21
Volume 2:1 APR 1992 p.21
J1205-24
Volume 2:2 JUL 1992 p.18
J1227-12
Volume 2:1 APR 1992 p.22
K0310-36
Volume 2:4 JAN 1993 p.18
K0630-29
Volume 2:3 OCT 1992 p.14
K1006-17
Volume 2:2 JUL 1992 p.14

VISITORS

K0405-18
Volume 2:3 OCT 1992 p.21

**PART III: DECISIONS UNDER THE
VOCATIONAL REHABILITATION SERVICES ACT**

BENEFITING FROM SERVICES

J0117-17
Volume 2:1 APR 1992 p.31
J0621-15
Volume 2:1 APR 1992 p.35

CREDIBILITY

L0228-06
Volume 2:4 JAN 1993 p.25

DISABLED PERSONS

K1006-28
Volume 2:4 JAN 1993 p.23
L0214-10
Volume 2:4 JAN 1993 p.24
L0228-06
Volume 2:4 JAN 1993 p.25

DISCRETION

G1006-18R
Volume 2:1 APR 1992 p.32
K0227-26
Volume 2:1 APR 1992 p.32

EDUCATIONAL PROGRAMS

K0227-26
Volume 2:1 APR 1992 p.32
K0801-09
Volume 2:3 OCT 1992 p.22

FAILURE TO PROVIDE INFORMATION

J0820-10
Volume 2:1 APR 1992 p.34

JURISDICTIONAL ISSUES

K0110-15
Volume 2:2 JUL 1992 p.26

LEARNING DISABLED

K0227-26
Volume 2:1 APR 1992 p.32

NOTICE REQUIREMENTS

K0110-15
Volume 2:2 JUL 1992 p.26

RECONSIDERATIONS

G1006-18R
Volume 2:1 APR 1992 p.32

SATISFACTORY PROGRESS

J0820-10
Volume 2:1 APR 1992 p.34
J0621-15
Volume 2:1 APR 1992 p.35

VOCATIONALLY DISABLED

J0820-10
Volume 2:1 APR 1992 p.34
K0215-21
Volume 2:2 JUL 1992 p.27
L0228-06
Volume 2:4 JAN 1993 p.25

REFERENCES TO STATUTES AND REGULATIONS

Child and Family Services Act

K1003-26
Volume 2:4 JAN 1993 p.17
s.14(i) and (ii)
J1127-27
Volume 2:1 APR 1992 p.17

Children's Law Reform Act

s.1(1)
K0320-03R
Volume 2:4 JAN 1993 p.12

Family Benefits Act, R.S.O. 1980, c.151

s.1(1)
K0805-02
Volume 2:2 JUL 1992 p.11
s.1(c)
K0805-02
Volume 2:2 JUL 1992 p.11

CUMULATIVE INDEX

Family Benefits Act, cont'd

- s.1(f)
L0227-09
Volume 2:4 JAN 1993 p.9
- s.1(f)(i)
K0520-24
Volume 2:2 JUL 1992 p.8
- s.12(b)
K0825-45
Volume 2:3 OCT 1992 p.5
- s.13
K0110-15
Volume 2:2 JUL 1992 p.26
- s.14
K0110-15
Volume 2:2 JUL 1992 p.26
- s.17
J0104-16
Volume 2:3 OCT 1992 p.7
J0730-04
Volume 2:1 APR 1992 p.7
K0426-03
Volume 2:2 JUL 1992 p.10
K0805-02
Volume 2:2 APR 1992 p.11

Family Law Act, 1986

- K0818-28
Volume 2:3 OCT 1992 p.15
- s.31(1)
K0320-03R
Volume 2:4 JAN 1993 p.12
- s.33(7)
K0320-03R
Volume 2:4 JAN 1993 p.12

Family Support Plan Act

- K0818-28
Volume 2:3 OCT 1992 p.15

General Welfare Assistance Act, R.S.O. 1980, c.188

- s.7(1)
K1007-06
Volume 2:3 OCT 1992 p.19
K0903-22
Volume 2:4 JAN 1993 p.14

General Welfare Assistance Act, cont'd s.7(2)

- K0903-22
Volume 2:4 JAN 1993 p.14
- s.10(2)(c)
K0208-02
Volume 2:1 APR 1992 p.15
- s.14
K0903-22
Volume 2:4 JAN 1993 p.14

Income Tax Act

- J1205-24
Volume 2:2 JUL 1992 p.18
K0818-28
Volume 2:3 OCT 1992 p.15

Indian Act

- J0528-13
Volume 2:1 APR 1992 p.20

Insurance Act, No-Fault Benefit Schedule

- s.13(1)
J1108-17
Volume 2:2 JUL 1992 p.9
- s.13(4)
J1108-17
Volume 2:2 JUL 1992 p.9

Interpretation Act

- s.10
K0310-09
Volume 2:4 JAN 1993 p.16

Ontario Regulation 318, R.R.O. 1980

- s.1(1)(aa)
J0702-08
Volume 2:1 APR 1992 p.11
J0827-28
Volume 2:1 APR 1992 p.13
- s.1(1)(aa)(vii)
K0129-32
Volume 2:1 APR 1992 p.6
- s.1(1b)
K0919-03
Volume 2:2 JUL 1992 p.12

Ontario Regulation 318, cont'd

| | | | | | | | |
|----------------|------------|----------|------|-----------|------------|----------|------|
| s.1(1)(d)(iii) | K0320-03R | JAN 1993 | p.12 | s.13(2)41 | J0230-08 | | |
| | Volume 2:4 | | | | Volume 2:2 | JUL 1992 | p.5 |
| s.1(2) | K0520-24 | JUL 1992 | p.8 | | J1108-17 | JUL 1992 | p.9 |
| | Volume 2:2 | | | | Volume 2:2 | | |
| s.1(1)(d) | J0816-12 | APR 1992 | p.10 | s.13(7) | K1017-11 | JAN 1993 | p.6 |
| | Volume 2:1 | | | | Volume 2:4 | | |
| s.2(5)(c) | K0812-24 | JAN 1993 | p.13 | | J0104-16 | OCT 1992 | p.7 |
| | Volume 2:4 | | | | Volume 2:3 | | |
| s.2(6) | K0812-24 | JAN 1993 | p.13 | | K0829-04 | OCT 1992 | p.8 |
| | Volume 2:4 | | | | Volume 2:3 | | |
| s.3(2)(a) | J0702-08 | APR 1992 | p.11 | s.13(8) | J0104-16 | OCT 1992 | p.7 |
| | Volume 2:1 | | | | Volume 2:3 | | |
| s.5(a)(i) | H0208-10R | APR 1992 | p.5 | s.14(3) | J0702-08 | APR 1992 | p.11 |
| | Volume 2:1 | | | | Volume 2:1 | | |
| s.5(b)(ii) | K0927-21 | JAN 1993 | p.5 | s.16(2) | K0923-31 | OCT 1992 | p.5 |
| | Volume 2:4 | | | | Volume 2:3 | | |
| s.7(1) | K0526-10 | JAN 1993 | p.8 | s.16(3) | K0129-32 | APR 1992 | p.6 |
| | Volume 2:4 | | | | Volume 2:1 | | |
| s.8 | J0827-28 | APR 1992 | p.13 | s.28(2) | L0227-09 | JAN 1993 | p.9 |
| | Volume 2:1 | | | | Volume 2:4 | | |
| s.13(1) | J0730-04 | APR 1992 | p.7 | s.29(1) | K0812-20 | JAN 1993 | p.11 |
| | Volume 2:1 | | | | Volume 2:4 | | |
| | J1108-17 | JUL 1992 | p.9 | s.29(2)b | K0812-20 | JAN 1993 | p.11 |
| | K0206-16 | APR 1992 | p.8 | | Volume 2:4 | | |
| s.13(1)a | L0227-15 | JAN 1993 | p.10 | s.30(4) | K0422-08 | JUL 1992 | p.5 |
| | Volume 2:4 | | | | Volume 2:2 | | |
| s.13(2) | J0730-04 | APR 1992 | p.7 | s.30(5) | K0422-08 | JUL 1992 | p.5 |
| | Volume 2:1 | | | | Volume 2:2 | | |
| s.13(2)22 | K1023-01 | JAN 1993 | p.5 | s.30(5a) | K0422-08 | JUL 1992 | p.5 |
| | Volume 2:4 | | | | Volume 2:2 | | |
| | | | | s.32(2) | L0227-09 | JAN 1993 | p.9 |
| | | | | | Volume 2:4 | | |
| | | | | s.38 | K0825-30 | JUL 1992 | p.7 |
| | | | | | Volume 2:2 | | |

CUMULATIVE INDEX

Ontario Regulation 318, cont'd

| | | | |
|------------|------------------------|----------|-----|
| s.38(2) | K0501-19 Volume 2:2 | JUL 1992 | p.7 |
| s.38(3) | K1216-09 Volume 2:4 | JAN 1993 | p.7 |
| s.38(3)(d) | K0501-19 Volume 2:2 | JUL 1992 | p.7 |
| s.41(1) | K0912-10 Volume 2:3 | OCT 1992 | p.9 |
| s.41(4)(a) | K0912-10 Volume 2:3 | OCT 1992 | p.9 |

Ontario Regulation 441, R.R.O. 1980

| | | | |
|-----------|------------------------|----------|------|
| s.1(1)(f) | K0326-19 Volume 2:3 | OCT 1992 | p.11 |
| | K0721-32 Volume 2:2 | JUL 1992 | p.24 |
| s.1(1)(i) | J0214-23 Volume 2:1 | APR 1992 | p.25 |
| s.1(1)(k) | J0528-13 Volume 2:1 | APR 1992 | p.20 |
| | J0610-19 Volume 2:1 | APR 1992 | p.21 |
| s.1(1)(o) | K0310-09 Volume 2:4 | JAN 1993 | p.16 |
| s.1(2) | K0630-29 Volume 2:3 | OCT 1992 | p.14 |
| s.1(2)(b) | J0214-23 Volume 2:1 | APR 1992 | p.25 |
| s.1(3) | K0813-31 Volume 2:4 | JAN 1993 | p.20 |
| | K0819-16 Volume 2:2 | JUL 1992 | p.21 |
| | K1107-21 Volume 2:2 | JUL 1992 | p.22 |

| | | | |
|---------------|------------------------|----------|------|
| s.1(6) | K1007-06 Volume 2:3 | OCT 1992 | p.19 |
| s.3(1)(a) | K1006-20 Volume 2:2 | OCT 1992 | p.12 |
| s.3(1)(b) | K1030-05 Volume 2:3 | OCT 1992 | p.13 |
| | K1119-23 Volume 2:4 | JAN 1993 | p.22 |
| s.3(1)(b)(ii) | J1112-12 Volume 2:1 | APR 1992 | p.19 |
| s.3(1)(ba) | K0813-31 Volume 2:4 | JAN 1993 | p.20 |
| s.3(2d) | K0812-19 Volume 2:3 | OCT 1992 | p.20 |
| s.3(3) | J1128-06 Volume 2:1 | APR 1992 | p.27 |
| | K0813-31 Volume 2:4 | JAN 1993 | p.20 |
| s.3(3)(a) | K0721-33 Volume 2:2 | JUL 1992 | p.24 |
| s.3(3)(b) | J0528-13 Volume 2:1 | APR 1992 | p.20 |
| | K0325-08 Volume 2:2 | JUL 1992 | p.22 |
| | K1003-26 Volume 2:4 | JAN 1993 | p.17 |
| s.4 | K1212-12 Volume 2:4 | JAN 1993 | p.15 |
| s.4(1) | K0723-08 Volume 2:3 | OCT 1992 | p.10 |
| s.4(1)b | K0723-08 Volume 2:3 | OCT 1992 | p.10 |
| s.5(1) | K0404-05 Volume 2:2 | JUL 1992 | p.16 |
| | K0916-14 Volume 2:3 | OCT 1992 | p.17 |

Ontario Regulation 441, cont'd

| | | | |
|------------|------------|----------|------|
| s.6(1) | J1128-06 | | |
| | Volume 2:1 | APR 1992 | p.27 |
| | J1205-16 | | |
| | Volume 2:1 | APR 1992 | p.28 |
| | K0808-26 | | |
| | Volume 2:3 | OCT 1992 | p.21 |
| s.6(1)(a) | J0106-11 | | |
| | Volume 2:1 | APR 1992 | p.25 |
| s.6(1)(c) | J0822-15 | | |
| | Volume 2:1 | APR 1992 | p.26 |
| s.6(2) | J0822-15 | | |
| | Volume 2:1 | APR 1992 | p.26 |
| | J1205-16 | | |
| | Volume 2:1 | APR 1992 | p.28 |
| | K0808-26 | | |
| | Volume 2:3 | OCT 1992 | p.21 |
| | K1119-23 | | |
| | Volume 2:4 | JAN 1993 | p.22 |
| s.6(4) | K0903-22 | | |
| | Volume 2:4 | JAN 1993 | p.14 |
| s.7 | K0310-09 | | |
| | Volume 2:4 | JAN 1993 | p.16 |
| s.8(10) | K1006-20 | | |
| | Volume 2:3 | OCT 1992 | p.12 |
| s.10(1) | J0106-11 | | |
| | Volume 2:1 | APR 1992 | p.25 |
| s.11(2a) | K0130-03 | | |
| | Volume 2:1 | APR 1992 | p.24 |
| s.12(1)(b) | K0818-28 | | |
| | Volume 2:3 | OCT 1992 | p.15 |
| | K1223-24 | | |
| | Volume 2:4 | JAN 1993 | p.21 |
| s.13a(1) | K0310-09 | | |
| | Volume 2:4 | JAN 1993 | p.16 |

| | | | |
|-------------|------------|----------|------|
| s.13(1) | J1227-12 | | |
| | Volume 2:1 | APR 1992 | p.22 |
| | K0130-03 | | |
| | Volume 2:1 | APR 1992 | p.24 |
| | K0630-29 | | |
| | Volume 2:3 | OCT 1992 | p.14 |
| | K1006-17 | | |
| | Volume 2:2 | JUL 1992 | p.14 |
| s.13(1)(a) | K0208-02 | | |
| | Volume 2:1 | APR 1992 | p.15 |
| s.13(1)(b) | K1125-15 | | |
| | Volume 2:4 | JAN 1993 | p.18 |
| s.13(2) | K0723-08 | | |
| | Volume 2:3 | OCT 1992 | p.10 |
| | K1006-17 | | |
| | Volume 2:2 | JUL 1992 | p.14 |
| s.13(2)1(i) | J1205-24 | | |
| | Volume 2:2 | JUL 1992 | p.18 |
| s.13(2)2 | K0826-13 | | |
| | Volume 2:4 | JAN 1993 | p.19 |
| s.13(2)11c | K0130-03 | | |
| | Volume 2:1 | APR 1992 | p.24 |
| s.13(2)12 | J1205-21 | | |
| | Volume 2:1 | APR 1992 | p.21 |
| | J1227-12 | | |
| | Volume 2:1 | APR 1992 | p.22 |
| | K0630-29 | | |
| | Volume 2:3 | OCT 1992 | p.14 |
| | K0723-08 | | |
| | Volume 2:3 | OCT 1992 | p.10 |
| s.13(2)12 | K0310-36 | | |
| | Volume 2:4 | JAN 1993 | p.18 |
| s.13(2)21 | K0604-16 | | |
| | Volume 2:1 | APR 1992 | p.16 |
| s.13(7) | K1006-17 | | |
| | Volume 2:2 | JUL 1992 | p.14 |
| s.15(1) | K0310-09 | | |
| | Volume 2:4 | JAN 1993 | p.16 |

CUMULATIVE INDEX

Ontario Regulation 943, R.R.O. 1980

- s.1(2)
 - L0214-10
 - Volume 2:4 JAN 1993 p.24
- s.1(2)(a)
 - K0227-26
 - Volume 2:1 APR 1992 p.32
- s.1(2)(d)
 - K1006-28
 - Volume 2:4 JAN 1993 p.23
- s.1(2)(f)
 - K0227-26
 - Volume 2:1 APR 1992 p.32

Residential Rent Regulation Act

- s.1
 - K1223-24
 - Volume 2:4 JAN 1993 p.21

Vocational Rehabilitation Services Act, R.S.O. 1980, c.525

- s.1(b)
 - J0117-17
 - Volume 2:1 APR 1992 p.31
 - K0215-21
 - Volume 2:2 JUL 1992 p.27
- s.1(b)
 - K1006-28
 - Volume 2:4 JAN 1993 p.23
 - L0214-10
 - Volume 2:4 JAN 1993 p.24
 - L0228-06
 - Volume 2:4 JAN 1993 p.25
- s.6
 - G1006-18R
 - Volume 2:1 APR 1992 p.32
- s.9(a)
 - J0117-17
 - Volume 2:1 APR 1992 p.31
- s.9(b)
 - J0117-17
 - Volume 2:1 APR 1992 p.31
- s.9(c)
 - J0117-17
 - Volume 2:1 APR 1992 p.31
 - J0621-15
 - Volume 2:1 APR 1992 p.35
 - J0820-10
 - Volume 2:1 APR 1992 p.34

- s.9(d)
 - J0621-15
 - Volume 2:1 APR 1992 p.35
 - J0820-10
 - Volume 2:1 APR 1992 p.34
- s.9(e)
 - J0820-10
 - Volume 2:1 APR 1992 p.34
- s.10(1)
 - K0110-15
 - Volume 2:2 JUL 1992 p.26

REFERENCES TO MANUALS

Family Benefits Policy and Procedural Guidelines Manual

- Index #11A
 - K0927-21
 - Volume 2:4 JAN 1993 p.5
- Index #12
 - K0129-32
 - Volume 2:1 APR 1992 p.6
- Index #17
 - J0230-08
 - Volume 2:2 JUL 1992 p.5
- Index #44
 - K0923-31
 - Volume 2:3 OCT 1992 p.5
- Index #45
 - K0825-45
 - Volume 2:2 OCT 1992 p.5
- Index #53 s.4.0
 - K0422-08
 - Volume 2:2 JUL 1992 p.5
- Index #64
 - K0426-03
 - Volume 2:2 JUL 1992 p.10
 - K0805-02
 - Volume 2:2 JUL 1992 p.11
- Index #76, Parental Relief
 - K0825-30
 - Volume 2:2 JUL 1992 p.7
- Index #76, Appendix 1
 - K0501-19
 - Volume 2:2 JUL 1992 p.7

SUMMARIES OF DECISIONS

Family Benefits Policy and Procedural Guidelines
Manual, cont'd

Policy 0202-04
L0227-09
Volume 2:4 JAN 1993 p.9
Policy 0404-05
L0227-09
Volume 2:4 JAN 1993 p.9

General Welfare Policy Guidelines

GW-0303-03
J1112-12
Volume 2:1 APR 1992 p.19
GW-0304-02
J0106-11
Volume 2:1 APR 1992 p.25
GW-0405-07
K0818-28
Volume 2:3 OCT 1992 p.15

Vocational Rehabilitation

VR-0303-04
K0215-21
Volume 2:2 JUL 1992 p.27

DEFINITIONS

"absent"
J0214-23
Volume 2:1 APR 1992 p.25
"beneficiary"
K0805-02
Volume 2:2 JUL 1992 p.11
"charitable organization"
K1023-01
Volume 2:4 JAN 1993 p.5
"child"
K0320-03R
Volume 2:4 JAN 1993 p.12
"cohabitation"
K0320-03R
Volume 2:4 JAN 1993 p.12

"dependant"
K0326-19
Volume 2:3 OCT 1992 p.11
"dependent adult"
K0721-32
Volume 2:2 JUL 1992 p.24
K0721-33
Volume 2:2 JUL 1992 p.24
"digging a well"
K0812-20
Volume 2:4 JAN 1993 p.11
"foster child"
J1127-27
Volume 2:1 APR 1992 p.17
"incur"
J1108-17
Volume 2:2 JUL 1992 p.9
"living with"
K0320-03R
Volume 2:4 JAN 1993 p.12
"maintenance"
K0723-08
Volume 2:3 OCT 1992 p.10
"on behalf of"
J1205-21
Volume 2:1 APR 1992 p.21
J1227-12
Volume 2:1 APR 1992 p.22
"optimum capacity"
L0214-10
Volume 2:4 JAN 1993 p.24
"parent"
K0320-03R
Volume 2:4 JAN 1993 p.12
"payment"
K0604-16
Volume 2:1 APR 1992 p.16
K0630-29
Volume 2:3 OCT 1992 p.14
"person in need"
K0630-29
Volume 2:3 OCT 1992 p.14
"physical assistance"
K0912-10
Volume 2:3 OCT 1992 p.9
"principal residence"
K0116-13
Volume 2:2 JUL 1992 p.15

CUMULATIVE INDEX

"reasonable"

J0920-06

Volume 2:1 APR 1992 p.18

"reasonable efforts to realize a financial resource"

K1003-26

Volume 2:4 JAN 1993 p.17

"recipient"

K0310-09

Volume 2:4 JAN 1993 p.16

K0426-03

Volume 2:2 JUL 1992 p.10

K0805-02

Volume 2:2 JUL 1992 p.11

"rent"

K1223-24

Volume 2:4 JAN 1993 p.21

"self-employed"

K0813-31

Volume 2:4 JAN 1993 p.20

K0819-16

Volume 2:2 JUL 1992 p.21

"shelter"

K0818-28

Volume 2:3 OCT 1992 p.15

K1223-24

Volume 2:4 JAN 1993 p.21

"spouse"

K0320-03R

Volume 2:4 JAN 1993 p.12

"supported by"

L0227-09

Volume 2:4 JAN 1993 p.9

"vocational rehabilitation"

K0215-21

Volume 2:2 JUL 1992 p.27

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**SUMMARIES OF
DECISIONS**

Volume 3, Number 1

May 1993

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ORGANIZATION

This publication is divided into three parts. Part I contains summaries of decisions that relate to the Family Benefits Act. Part II contains summaries of decisions relating to the General Welfare Assistance Act, and Part III contains summaries of decisions relating to the Vocational Rehabilitation Services Act.

Each decision summarized in this publication is assigned a number of different index terms which reflect its content. The summaries appear under the one heading which best expresses the most noteworthy issue under discussion in each decision. This heading is in **BOLD** type at the beginning of each summary. These headings are arranged in alphabetical order within Part I, Part II, and Part III.

Other index terms which apply to a decision are listed separately to provide a further indicator of content.

Example:

CATEGORICAL ELIGIBILITY

OTHER INDEX TERMS: JOINT CUSTODY; RECONSIDERATIONS;
SINGLE PARENT WITH DEPENDENT CHILDREN

FILE NUMBERS

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File Number: F0927-16R

DATE OF HEARING

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THE SUMMARIES

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The disposition of the case, the number of pages in the full-text version of the decision, and the language in which the decision was written appear as the last sentence in the summary. Certain decisions have both an English and French language version available.

Example:

Appeal denied. (16 pp English; or 18 pp French)

REFERENCES

These references are to documents and authorities considered in and commented on in some detail by the Board in its findings. They are further indicators of the relevance of the decision. The list may include, in this order: federal and provincial statutes, regulations, cases, books, treatises, and manuals. Terms whose meanings are discussed in a significant way appear in quotation marks at the end of the list.

Example:

General Welfare Assistance Act s.7(1); Re Richardson and the Commissioner of Metropolitan Toronto Department of Social Services (1988), 46 O.R. (2d) 63; "reside"

CUMULATIVE INDEX

A cumulative index to this publication is included with each issue. Use it to find summaries of decisions on specific subjects of interest to you.

References to summaries in the current issue are integrated with references from preceding issues in this list. Therefore, the most recent index can also be used to find decisions summarized in previous issues. KEEP YOUR BACK ISSUES FOR FUTURE REFERENCE. At the beginning of each volume we will begin a new index.

The cumulative index is divided into the same three parts as the rest of the publication. Part I of the index refers to the Family Benefits Act. Part II refers to the General Welfare Assistance Act, and Part III to the Vocational Rehabilitation Services Act.

The index is arranged in alphabetical order by subject within each of the Parts. Each decision appears under several different index terms to provide a detailed guide to its content. Note that headings are of many different types. Factual, procedural, and conceptual terms are used and the names of statutes or programs may also appear as index terms.

Example:

| | |
|--|--------------|
| DRUG BENEFIT | (factual) |
| EXTENSION OF TIME | (procedural) |
| ONUS | (conceptual) |
| <u>CANADIAN CHARTER OF RIGHTS AND FREEDOMS</u> | (statute) |
| S.T.E.P. | (program) |

HOW TO USE THIS PUBLICATION

The index terms are upper case. The line below shows the File Numbers of all of the decisions which contain information on these subjects.

Example:

EXTENSION OF TIME

H0321-05

Volume 2:3 OCT 1992 p.5

Information under the File Number shows where that particular summary originally appeared in our publication. The issue number and date and the page number are provided. ■

PART I

**DECISIONS UNDER THE
FAMILY BENEFITS ACT**

APPLICATIONS

File Number: L0420-16

Date of Hearing: December 15, 1992

The Recipient received an allowance as a sole-support mother until her last child left home. She then reapplied for Family Benefits as a permanently unemployable person. According to the Director's file, the application was dated December 9, 1991, but was only finalized after the Medical Report, Form 4, was received by Family Benefits, three months later. The Recipient was found to be permanently unemployable but believed she should have been granted benefits as of her date of application. The question before the Board was whether her benefits should have commenced earlier, on the grounds that the delay in completing the application was caused by the Recipient's physician and was not in her control.

The Board concluded that s.14(3) of O.Reg. 318 gives the Director some discretion to backdate payments in situations where the delays are beyond an applicant's control only if the Director has received the complete application. There is no section in the legislation to deal with delays caused by a third party such as the family physician. In this case, there was no dispute that the medical evidence was not submitted until

March 1992. The Director could not complete the application before receiving the medical documentation and did not have the authority to grant benefits earlier than the month after the application was completed. **Appeal denied. Decision of the Director affirmed.** (6 pp English; 6 pp French)

REFERENCES: O.Reg. 318 s.14(3)■

AVAILABLE FINANCIAL RESOURCE

Other Index Terms: DISCRETION

File Number: L0602-17

Date of Hearing: January 26, 1993

The Applicant was a single male, 18 years of age. Prior to July 1992, he was living independently and was financially supported by the Children's Aid Society. The support was terminated because of the Applicant's poor school attendance and poor academic progress. The Administrator argued that because the Applicant did not make reasonable efforts to meet his obligations, he should be denied assistance under subsection 3(3)(b) of the Regulation.

In the Board's view, s.3(3)(b) stipulates that the Administrator must be satisfied that the Applicant made reasonable efforts to obtain compensation and maintenance, after which the Administrator may refuse assistance. The power to do so is, however, discretionary. The Administrator is not required to refuse assistance, but must consider the particular circumstances of each case.

FAMILY BENEFITS ACT

The Applicant had received written notice of the termination of his agreement with the CAS due to poor school performance. He could not return to school until a decision about admitting him was made by the school. He, however, understood the notice from the CAS to mean that he could not reapply for maintenance until he was actually in school.

The Applicant later returned to school and received General Welfare Assistance. However, the Administrator argued that the Applicant had been responsible for his own misfortune at the time in question; the Administrator therefore found it appropriate to impose a penalty period.

Although the Board agreed that the loss of CAS support was for reasons within the Applicant's control, it was the Board's opinion that the legislation did not contemplate the punitive action taken by the Administrator in this case. Moreover, the Applicant was a person in need at the time in question. **Appeal granted. Decision of the Administrator rescinded.** (8 pp; English)

REFERENCES: O.Reg. 441 s.3(3)(b) ■

FOSTER PARENTS AND CHILDREN

Other Index Terms: DISCRETION

File Number: K0820-01

Date of Hearing: December 2, 1992

The Applicant applied for an allowance as

a foster parent. The child in question had been removed from the adoptive home by the Children's Aid Society and eventually placed with the Applicant who became the legal guardian of the child. The Director found the Applicant ineligible because she was unwilling to make reasonable efforts to obtain child support from the adoptive parents.

The evidence showed that the adoptive home had been abusive. The adoptive father, for example, had been convicted of abuse charges and sentenced to jail in the past. The Applicant and the foster child feared any contact with the adoptive parents, and did not want to pursue them for support.

Section 8 of Regulation 318 imposes an obligation on individuals to exhaust all avenues of private support prior to receiving public support. This section, however, is discretionary and the Board concluded that the Director had failed to recognize the unique circumstances of this case. Based on the compelling evidence of the Applicant and the foster child, and because of their justifiable concerns about the adverse effect of pursuing support, including the pressure for access in undesirable circumstances, the Board concluded that it was appropriate to waive the support requirement. **Appeal granted. Decision of the Director rescinded.** (7 pp; English)

REFERENCES: *Family Benefits Act* s.7(1)(f); O.Reg. 318 s.8 ■

**HOMES, HOSPITALS, AND
INSTITUTIONS, PATIENT OR
RESIDENT IN**

Other Index Terms: DAMAGES OR
COMPENSATION FOR PAIN AND
SUFFERING; INSURANCE; PAYMENTS
RECEIVED

File Number: K0715-32

Date of Hearing: October 27, 1992

The Recipient was a disabled person. He had been struck by a motor vehicle and sustained a brain injury. The accident occurred in the United States. He was taken by ambulance across the border to Ontario where he was admitted to hospital while in a coma. For the next 12 years, he was placed in various residential facilities but all programs ended in failure.

He eventually entered a residential treatment facility in the United States. A witness at the hearing testified that since the accident had occurred in a state which had a no-fault insurance plan, the insurance company was responsible for all of the Recipient's rehabilitation costs for life. The insurance company had therefore paid all of the costs since the Recipient entered the facility in the USA. The witness testified that those costs were strictly for the Recipient's rehabilitation and included items such as counselling, physiotherapy, occupational therapy, vocational training, and cognitive therapy. They did not provide for the Recipient's clothing, food, or transportation. When the Director became aware of these insurance payments, the Recipient's allowance was suspended.

The Recipient testified that he had initially resided at the facility full time. However, as part of his eventual integration into independent living, he began to spend his weekends with his parents who lived in Ontario.

The first issue before the Board was whether the Recipient was a resident of Ontario. Case law on the subject suggests that a person can leave a place of residence for a particular purpose and a specified period of time and continue to be a resident. The Recipient's weekend visits to his parents, in the view of the Board, demonstrated a clear and practical intent to return to Ontario. He was in the USA for a specific time period dictated by his treatment program.

Further, the Recipient's access to the facility was subject to a Parole Visa, a document which indicated that he had no right to remain in the USA after his treatment program was finished.

Lastly, the Board reasoned that the Recipient was found to be eligible for an allowance in the first instance because of his brain injury. In the Board's opinion, it would be unjust to find him ineligible because he had been receiving treatment in the USA for a condition that rendered him eligible in Ontario. The Board concluded that the Recipient met the residence requirement of the legislation.

The second issue was whether the insurance payments should be considered "income" as defined by s.13 of the Regulation. In the Board's opinion, the insurance payments were income unless they were damages or

FAMILY BENEFITS ACT

compensation for pain or suffering, or for expenses arising from the accident. There was no substantive documentary evidence to suggest that they were either.

The remaining question was whether the insurance payments constituted payments "received by or on behalf of the Recipient". In the Board's view, the words "on behalf of" should be interpreted as meaning "for the benefit of". The Board was of the view that although the Recipient did not actually receive the money himself, he benefited directly from the payments by remaining in the program. The Board concluded that the insurance payments were income and that the amount of the payments exceeded the allowance that the Recipient would receive. Therefore, the Recipient was not a person in need. **Affirmed in part.** (12 pp; English)

REFERENCES: *Family Benefits Act* s.7(1); O.Reg. 318 s.2(5), s.13(1), s.13(2)7; *In re Citizenship Act and in re Antonios E. Papadogiorgakis*, [1978] 2 F.C. 208, *Re Millar*, [1976] D.L.R. (2d) 120 (P.E.I.S.C.); "on behalf of", "residence"■

ONTARIO MOTORIST PROTECTION PLAN

Other Index Terms: ASSIGNMENT; INSURANCE; OVERPAYMENTS

File Number: J0313-15R

Date of Hearing: October 7, 1992

The Recipient was a sole-support parent. She supplemented her allowance with part-time earnings. In 1988, she had been seriously injured in an automobile accident

and was unable to continue working. Under the terms of the driver's motor vehicle insurance, she was entitled to no-fault benefits of \$46.20 per week. The Director decided that these payments were "insurance benefits" under section 13(2)7 of Regulation 318 and must therefore be considered as income.

The Recipient asked the Board to review the Director's decision. The Board decided that the "no-fault" benefits were income within section 13(2)1 rather than section 13(2)7, and that the Recipient was entitled to some of the exemptions allowed by s.13(2)1. The Board referred the matter back to the Director to recalculate the overpayment in accordance with the decision of the Board. The Director asked the Board to hold a hearing for reconsideration.

The Recipient's argument was that the no-fault benefits were based on her pre-accident earnings and could be described as "income from wages", or an "amount payable to a recipient in respect of gross monthly income from wages".

In the view of the Board, the legislation deals with earned income differently than other types of income. Section 13(2)1 gives privilege to earned income by allowing various exemptions, while other types of income, including those which are intended to replace income, are not given the same privilege. While there may be public policy arguments for extending the earnings exemptions to no-fault benefits, it is quite possible that giving privilege to earned income was the intent of the legislature. The Board therefore concluded that the

Recipient's no-fault benefits were properly treated as income within s.13(2)7.

The Recipient's legal representative further argued that although the Recipient had provided all of the information that the Director had requested, the Director had not acted promptly enough to avoid incurring an overpayment. The evidence, however, indicated that because the cheques had been deposited by a third party while the Recipient was in hospital, there was confusion about the precise dates when she first learned of her settlement and when she informed the Director.

The Board decided that the overpayment was recoverable. In the Board's opinion, once the Family Benefits office became aware of the Recipient's no-fault benefits, they moved at a reasonable pace. **Appeal granted. Decision of the Director affirmed.** (19 pp; English)

REFERENCES: O.Reg. 318 s.13(2)1, s.13(2)7■

SPOUSE

Other Index Terms: CREDIBILITY

File Number: K1027-32

Date of Hearing: July 7, 1992

The Recipient had been receiving an allowance as a sole-support parent. Following an investigation, the Director determined that she was living with A., her spouse, and her allowance was therefore terminated. It was not disputed that A. was the Recipient's spouse.

The Director argued that A. and the Recipient had shared common residences at various times. Neighbours of the Recipient gave evidence that A., the Recipient, the Recipient's twin sister, and their children had all lived together for a period of time.

The credibility of the witnesses was an important issue before the Board. The Recipient's position was that she had not lived with A. since 1982, when she had returned to Canada with her children and left him behind. She said that she did not know that he had been living in her city until 1992, at which time she also discovered that he was having a relationship with her sister.

In the Board's view, the facts in this case were somewhat unusual in that, whenever the Recipient and A. shared common premises, her twin sister was also in the home. The only consistent evidence among the witnesses, including the Director's witness, seemed to indicate that if there were a relationship, it was between A. and the Recipient's twin sister, not the Recipient.

Although a sexual relationship was not relevant to this question, economic factors were. The Director did not provide any evidence with regard to the living or financial arrangements of the household in order to support the argument that they were "living with" one another. Moreover, the unrefuted evidence regarding the reason for the co-residence was an economic one. The Recipient had been evicted several times and did not have the means to establish a residence of her own; moreover, none of the evidence indicated that their

with respect to these matters. **Appeal granted. Decision of the Director rescinded.** (13 pp; English)

REFERENCES: O.Reg 441 s.1(1)(n)(ii); "living with"■

BANKRUPTCY

Other Index Terms: EXTENSION OF TIME; OVERPAYMENTS

File Number: K1120-14

Date of Hearing: June 11, 1992

The issue in this case was whether the Administrator was entitled to assess an overpayment. The Recipient did not dispute that he had incurred the overpayment; however, he had filed for bankruptcy and argued that because he was in the middle of bankruptcy proceedings, the Administrator was not entitled to collect the payment through a reduction of his assistance. By the time of the hearing, the Administrator had already recovered a portion of the overpayment. The Board had to determine whether this money was collected in contravention of the bankruptcy legislation and should therefore be returned to the Recipient.

At the hearing, the Recipient testified that the Trustee had explained that the complete overpayment could be recovered by the Administrator by submitting a Proof of Claim to the Trustee. Sufficient money remained with the Trustee of the Recipient's total assets to pay the overpayment and the Ministry was a

priority creditor who would be fully reimbursed.

The General Welfare Assistance policy manual contains no guidelines regarding the recovery of overpayments during bankruptcy proceedings. Family Benefits policy, however, indicates that although the Director normally has a right to collect a debt owing to the Crown by deductions from an allowance, where bankruptcy proceedings have commenced, this statutory remedy is suspended and the provisions of the *Bankruptcy Act* take precedence over the remedy provided under the *Family Benefits Act*. After a review of applicable case law, the Board concluded that the Family Benefits policy was consistent with the Canadian law of bankruptcy, and that similar considerations should apply in General Welfare Assistance cases.

The Board concluded that, as a matter of law and policy, when the Recipient was discharged as a bankrupt, the debt of the Crown, like other debts provable in bankruptcy, was released. The money recovered by the Administrator should be reimbursed. **Appeal granted. Decision of the Administrator rescinded.** (15 pp; English)

REFERENCES: *Bankruptcy Act* s.69(1), s.124(1); *General Welfare Assistance Act* s.12; *Re Deloitte, Haskin & Sells and Workers' Compensation Board et al* (1985), 19 D.L.R. (4th) 577, S.C.C.; Policy 0503-03, *Family Benefits Policy and Procedural Guidelines Manual*■

EXTENSION OF TIME

File Number: K0105-04

Date of Hearing: July 16, 1992

The preliminary issue in this appeal was whether to grant an extension of time to hear this appeal. The legislation provides that the Board may grant an extension of it is satisfied that there are *prima facie* grounds for requesting a hearing. In this case, the Board was convinced that such grounds were present.

Secondly, the Board must be satisfied that there were reasonable grounds for applying for the extension. The Recipient's request for an extension of time was received 15 months after the time limit. The Administrator objected to the granting of an extension of time, stating that the unusually long delay had prejudiced the case, but not explaining how.

The Administrator indicated that the Recipient had been informed in writing and in a timely manner of her overpayment and of her right to appeal. Moreover, she had previously incurred several overpayments and had been notified of her right to appeal, each time. Some of these arose as early as 1985. The Board examined copies of the letters and noted that, while they did indeed advise the Recipient of her right to appeal they did not indicate that there were any time limits for filing.

The Recipient maintained that she had mailed two Requests for Hearing prior to sending the appeal in question. These documents were not received by the Board,

nor did the Recipient have copies of them. She had, however, referred to these two previous requests in writing when filing the present appeal. On examining the envelope which had contained the latest request, the Board noted that it had been first addressed to the local welfare office and had been then redirected to the Board, suggesting that the Recipient had not known the correct address. The Board accepted this as corroboration of the Recipient's story. When the Board asked why the Recipient had not phoned to enquire about the earlier requests, she explained that she had returned to work and was no longer receiving assistance, and therefore assumed that this was the reason for the lack of a response to her request for an appeal. The Board was not prepared to deny the Recipient's right to appeal when there was some evidence that she had tried to appeal considerably earlier. **Extension granted.** (12 pp; English)

REFERENCES: *General Welfare Assistance Act* s.11(2) ■

EXTENSION OF TIME

Other Index Terms: BANKRUPTCY

File Number: K0530-15

Date of Hearing: December 6, 1991

The preliminary issue in this appeal was whether the Board should extend the time limit for requesting a hearing. The Recipient first received ongoing assistance in March 1986. In May 1987, the Administrator began to collect an overpayment from him. This was, however,

GENERAL WELFARE ASSISTANCE ACT

the last month that he received assistance until January 1991, when he again received assistance for one month. From April 1991, his assistance was again ongoing.

The Recipient was notified of the overpayment by two letters, one in the summer of 1987 and one again in March 1989. He submitted that he did not appeal the overpayment in 1987 because, at that time, he did not feel that its recovery was unfair. However, in March 1988, he was unconditionally discharged from bankruptcy. When he received assistance again in January 1991 he was surprised to note that the overpayment recovery deduction was still in force, despite his discharge from bankruptcy. He did not appeal at this time because the amount was small, he was very busy attending university, and did not think that he would be receiving assistance again in the future. However, when he began to receive ongoing assistance in April 1991, he discussed the deduction with his worker. Although the Recipient knew that he had the legal right to appeal, he did not know if he had grounds for an appeal. After a number of enquiries he was referred to a legal clinic. His Request for Hearing was finally completed on August 30, 1991.

The Board found that the Recipient had *prima facie* grounds for claiming relief. There were several dates when an appeal could have been launched. The Board accepts that the Recipient did not appeal the first time because he believed the overpayment to be appropriate. However, the Board found that the Recipient's reasons for not requesting a hearing at a later date were not "reasonable grounds" for

a time extension. **Extension denied.** (5 pp; English). **Note:** This case was continued as a reconsideration, which confirmed the original decision of the Board.

REFERENCES: *General Welfare Assistance Act* s.11(3)■

JOINT CUSTODY

Other Index Terms: APPLICATIONS; PREGNANCY ALLOWANCE; S.T.E.P.

File Number: K0513-08

Date of Hearing: July 7, 1992

The Recipient was initially granted assistance as a married person with a dependent child. The first issue in this appeal was whether the Recipient was eligible for assistance as a person in need with budgetary requirements in excess of income. The Recipient argued that his entitlement was incorrectly calculated.

Pertaining to budgetary requirements, the Recipient claimed that he had joint custody of his second dependent child and that his budgetary requirements should have included her as his dependant, in proportion to the time she lived with him. She lived with him 30 per cent of the time. The Administrator maintained that the mother was considered to have primary care and control of the child because she received the Family Allowance cheque. The Board found that it was incorrect to determine whether a person is a parent of a dependent child using this criterion.

The Board accepted that the child lived

GENERAL WELFARE ASSISTANCE ACT

with the Recipient 30 per cent of the time and found that she was also supported and maintained by her father through the provision of shelter, food, and clothing. Policy GW 0304-03 recognizes that there are expenses incurred for dependent children who are away from home and directs that a child's share of budgetary needs be prorated and included in the family's budget. Moreover, the statutory definition of "dependent child" does not stipulate that the child must live with and be supported by a parent the entire time. While acknowledging that all joint custody arrangements may not always be reasonably addressed by proration, the Board concluded that the Recipient was entitled to 30 per cent of the budgetary entitlement for an additional dependent child.

The Recipient queried the commencement date of the pregnancy allowance received. He submitted that he should have been eligible for this allowance in July 1991. The Administrator explained that it was usual to commence a pregnancy allowance three months prior to the baby's due date and to continue it for a period of six months. Applying this policy, the allowance would have started August 1, 1991. The Board noted that the Administrator's practice in that particular office was more restrictive than the legislation itself. The legislation gives the Administrator the flexibility to grant the allowance for any six months in the period between the third month of pregnancy and the sixth month after birth. The Board agreed that the Recipient was entitled to it in July 1991, and because the addition of this allowance was important in establishing the Recipient's eligibility, the Administrator

should not have denied it.

A number of issues concerning the Recipient's income were also raised. Relying on subsection 13(2)1 of the Regulation, the Recipient considered that his wife's expenses in providing child care from their home should be subtracted from her gross income. The Board, however, agreed with the Administrator that the reference to net income in this subsection refers to an unemployable person or the head of a family with no spouse, and found that the gross income from babysitting must be included in the calculation.

The legislation allows a percentage of net earnings to be excluded from income for the purposes of establishing eligibility. Because the Administrator failed to use the net amount in the calculation, the Recipient raised the question of the assessment of his income from Unemployment Insurance. The issue of when the income was received was also raised.

Unfortunately, the Recipient had brought the wrong documents to the hearing and was unable to provide the needed evidence, so this matter could not be resolved. The Administrator offered to again review the Recipient's eligibility after examining these documents. The Board referred this aspect of the Recipient's eligibility back to the Administrator.

The Recipient further argued that he had had no opportunity to make a submission to the Administrator regarding the cancellation, which he thought was his right according to the *General Welfare Assistance Act* s.10(3). The Administrator

SUMMARIES OF DECISIONS

pointed out that the Recipient had discussed the cancellation on the telephone, but regretted that the Recipient had not received a cancellation notice in writing. The Administrator further noted that there was now a formal internal appeal process in place, which would provide a clear opportunity for such submissions in future. The Board had no jurisdiction to address this matter.

The Recipient had attempted to have an application taken one month after the denial of assistance. The Administrator had refused. The Recipient argued that the legislation did not state that applications could be refused and that his circumstances had changed greatly in the month following the denial. After determining that it had jurisdiction to review a refusal to take an application, the Board agreed that the Recipient may well have qualified for assistance at this time.

The Board concluded that the Administrator erred in refusing to take an application. The Board therefore directed the Administrator to take an application and review the Recipient's eligibility. (31 pp; English)

REFERENCES: *General Welfare Assistance Act* s.4(2), s.10(3); O.Reg. 441 s.12(2)7, s.13(2)1; *Auckland v. Yonge-Esplanade Enterprises Ltd.* (1992), 10 O.R. (3d) 97, *Cash v. George Dundas Realty Ltd.* (1973), 1 O.R. (2d) 241; Policy 0203-02, *Family Benefits Policy and Procedural Guidelines Manual*; GW 0304-03, *General Welfare Policy Guidelines*; "dependent for support and maintenance", "living with"■

RENTALS

Other Index Terms: INCOME;
PAYMENTS RECEIVED

File Number: K0326-25

Date of Hearing: June 16, 1992

The Applicant and his wife were part owners of two rental properties, neither of which was their principal residence. The Administrator refused assistance on the grounds that the income from those properties was income received by or on behalf of the Applicant, thus giving them income in excess of their budgetary requirements.

The Applicant testified that both properties were owned by incorporated companies. In 1991, both properties had a net loss and no dividends were declared. The documents presented to the Board indicated that Property A was owned by a corporation and that the Applicant was a shareholder with an 18 per cent interest in the corporation. The Applicant supplied the Board with the name of a numbered company, purported to be owner of Property B; however, the documents before the Board indicated that this property was held in co-tenancy by six persons, two of whom were the Applicant and his wife.

The Applicant also testified that he occasionally did some repairs and upkeep on Property A and that he was paid approximately \$2,500 for this work in 1991. He stated that this amount was put towards his contribution in the shareholders account. He also worked in the evenings at Property B, in the capacity of administrator.

GENERAL WELFARE ASSISTANCE ACT

Rather than accept a management fee, he left the money in the corporation to pay his share of the participants' equity.

The legislation provides that where an applicant has rental income, 60 per cent of it is considered to be income for the purposes of General Welfare. In the Board's opinion, 40 per cent is presumably excluded in order to take into account expenses associated with renting the premises. If the expenses exceed the rental income and the building is operating at a loss, in the view of the Board, these additional expenses cannot be taken into account. The legislation is clear that 60 per cent must be viewed as income.

A further question was whether the rental income constituted "payments of any nature or kind received by or on behalf of" the Applicant. Property A was owned by a corporation of which the Applicant was a shareholder. In law, the income derived from the assets of a corporation is the income of the corporation, not the income of the shareholders. The Board found that the Applicant did not receive rental income from this property. He did, however, receive income for work done for the corporation, which must be taken into account when determining eligibility.

Property B was not owned by a corporation. The Applicant and his wife had a 33.32 per cent *pro rata* interest in this property. Therefore, 33.32 per cent of the rental income was attributable to the Applicant. According to the legislation, 60 per cent of this *pro rata* share must be included in the calculation of income. The Board also found that the Applicant had

received the equivalent of certain monies for the work that he did for Property B. The Board concluded that the Applicant had income in excess of his entitlement. **Appeal denied. Decision of the Administrator affirmed.** (10 pp; English)

REFERENCES: O.Reg. 441 s.13(1)(a) and (b), s.13(12)13 ■

STUDENTS

File Number: K1117-09

Date of Hearing: May 13, 1992

The Applicant was enrolled as a part-time student in university. She had moved to Ontario from Quebec in order to learn English. Because she had failed two courses the previous year, the university would not permit her to attend full time.

She shared an apartment with her sister and was responsible for paying 50 per cent of the rent and the full cost of hydro, telephone, cable television, and car payments. She worked in a restaurant to support herself and explained that she was unable to work more hours and keep up her studies at the same time.

When the Applicant inquired about financial assistance from the Ontario Student Award Program she was told that the Quebec Student Assistance Program was responsible for her ongoing assistance. When she applied in Quebec she was told that they do not assist part-time students.

The Administrator advised the Applicant that she was ineligible for assistance

SUMMARIES OF DECISIONS

VOCATIONAL REHABILITATION SERVICES ACT

for the Recipient and he had been advised in writing on four occasions that his file would be closed if his disruptive behaviour continued. He had been referred to a number of programs for treatment of head injuries but the Recipient had either ignored them or had been denied treatment because of his behaviour.

The Board concluded that the nature of the vocational rehabilitation program could not provide the treatment that the Recipient required in order to benefit from rehabilitation, and concluded that the Director had acted correctly. **Appeal denied. Decision of the Director affirmed.** (6 pp; English)

REFERENCES: *Vocational Rehabilitation Services Act* s.9(b) and (c) ■

EXTENSION OF TIME

Other Index Terms: FAMILY BENEFITS; RECONSIDERATIONS

File Number: H0906-09R

Date of Hearing: February 26, 1993

The preliminary issue in this appeal was whether there were grounds to extend the time for the Directors to bring this Reconsideration Hearing.

The Recipient, a hearing-impaired person, applied for a Family Benefits allowance and for sponsorship in a Vocational Rehabilitation Services Program in July 1989. During that summer she completed a six week course in mathematics at a

secondary school, with the assistance of a sign language instructor. Then she enrolled in a smaller private school which was not a school for the hearing-impaired. In November 1989, the Director of Income Maintenance mistakenly notified the Recipient that she was no longer eligible for a Family Benefits allowance because she had voluntarily withdrawn from the VRS program.

The Recipient appealed this decision by filing a Notice of Request for Hearing on December 6, 1989. She claimed that she had not voluntarily withdrawn from the program in question. On February 7, 1990, the Director of Income Maintenance submitted a report to the Board admitting the error in the letter and stating that the allowance had actually been cancelled because the Recipient was not participating in a program established under the *Vocational Rehabilitation Services Act*. The appeal was heard in August 1990. In a decision dated March 11, 1992, the Board rescinded the decisions of both the Directors of Income Maintenance and Vocational Rehabilitation Services. The date stamp on the document indicated that this decision had been received by the Respondents on March 19, 1991. The Respondents did not file an Application for Reconsideration until three months after the decision was received.

The Director claimed that the school and program attended by the Recipient was not covered by the *Vocational Rehabilitation Services Act*, therefore there were *prima facie* grounds to extend the time to request a reconsideration.

SUMMARIES OF DECISIONS

However, the Board found the grounds for an extension unreasonable. The spokesperson for the Director attempted to explain the delay in requesting a reconsideration. The VRS supervisor had been absent from work due to illness and no one had acted on his behalf. However, the Form 2 was not filed, in fact, until 52 calendar days after his return to work. The spokesperson also outlined in detail the internal office procedure that was required for filing a Form 2. In the opinion of the Board, these procedures were complex and lengthy and the Board found it difficult to

believe that any application for reconsideration could be completed within the statutory time period, even had staff not been absent. The Board did not consider that the Recipient should be made to bear the burden of the delay caused by an inefficient process. **Extension denied. Original decision of the Board confirmed.** (8 pp; English)

REFERENCES: *Family Benefits Act* s.13(6)■

CUMULATIVE INDEX

This index includes cases published in Volume 3:1 of
SUMMARIES OF DECISIONS

PART I: DECISIONS UNDER THE FAMILY BENEFITS ACT

APPLICATIONS

L0420-16

Volume 3:1 MAY 1993 p.5

ASSIGNMENT

J0313-15R

Volume 3:1 MAY 1993 p.5

AVAILABLE FINANCIAL RESOURCE

L0602-17

Volume 3:1 MAY 1993 p.5

CREDIBILITY

K1027-32

Volume 3:1 MAY 1993 p.9

DAMAGES OR COMPENSATION FOR PAIN AND SUFFERING

K0715-32

Volume 3:1 MAY 1993 p.7

DISCRETION

K0820-01

Volume 3:1 MAY 1993 p.6

L0602-17

Volume 3:1 MAY 1993 p.5

FOSTER PARENTS AND CHILDREN

K0820-01

Volume 3:1 MAY 1993 p.6

HOMES, HOSPITALS, AND INSTITUTIONS, PATIENT OR RESIDENT IN

K0715-32

Volume 3:1 MAY 1993 p.7

INSURANCE

J0313-15R

Volume 3:1 MAY 1993 p.8

K0715-32

Volume 3:1 MAY 1993 p.7

ONTARIO MOTORIST PROTECTION PLAN

J0313-15R

Volume 3:1 MAY 1993 p.8

OVERPAYMENTS

J0313-15R

Volume 3:1 MAY 1993 p.8

PAYMENTS RECEIVED

K0715-32

Volume 3:1 MAY 1993 p.7

SPOUSE

K1027-32

Volume 3:1 MAY 1993 p.9

PART II: DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

AGE

K0117-06

Volume 3:1 MAY 1993 p.10

CUMULATIVE INDEX

APPLICATIONS

K0513-08
Volume 3:1 MAY 1993 p.13

BANKRUPTCY

K0530-15
Volume 3:1 MAY 1993 p.12
K1120-14
Volume 3:1 MAY 1993 p.11

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

K0117-06
Volume 3:1 MAY 1993 p.10

EVIDENCE

K0117-06
Volume 3:1 MAY 1993 p.10

EXTENSION OF TIME

K0105-04
Volume 3:1 MAY 1993 p.12
K0530-15
Volume 3:1 MAY 1993 p.12
K1120-14
Volume 3:1 MAY 1993 p.11

INCOME

K0326-25
Volume 3:1 MAY 1993 p.15

JOINT CUSTODY

K0513-08
Volume 3:1 MAY 1993 p.13

JURISDICTIONAL ISSUES

K0117-06
Volume 3:1 MAY 1993 p.10

OVERPAYMENTS

K1120-14
Volume 3:1 MAY 1993 p.11

PAYMENTS RECEIVED

K0326-25
Volume 3:1 MAY 1993 p.15

PREGNANCY ALLOWANCE

K0513-08
Volume 3:1 MAY 1993 p.13

PROCEDURES

K0117-06
Volume 3:1 MAY 1993 p.10

RENTALS

K0326-25
Volume 3:1 MAY 1993 p.15

S.T.E.P.

K0513-08
Volume 3:1 MAY 1993 p.13

STUDENTS

K1117-09
Volume 3:1 MAY 1993 p.16

PART III: DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

CREDIBILITY

L0525-16
Volume 3:1 MAY 1993 p.17

EXTENSION OF TIME

H0906-09R
Volume 3:1 MAY 1993 p.18

FAMILY BENEFITS

H0906-09R
Volume 3:1 MAY 1993 p.18

RECONSIDERATIONS

H0906-09R
Volume 3:1 MAY 1993 p.18

REFERENCES TO STATUTES AND REGULATIONS

Bankruptcy Act

s.69(1)

K1120-14
Volume 3:1 MAY 1993 p.11

CUMULATIVE INDEX

Bankruptcy Act, cont'd

- s.124(1)
K1120-14
Volume 3:1 MAY 1993 p.11

Family Benefits Act

- s.7(1)
K0715-32
Volume 3:1 MAY 1993 p.7
- s.7(1)(f)
K0820-01
Volume 3:1 MAY 1993 p.6
- s.13(6)
H0906-09R
Volume 3:1 MAY 1993 p.18

General Welfare Assistance Act

- s.4(2)
K0513-08
Volume 3:1 MAY 1993 p.13
- s.10(3)
K0513-08
Volume 3:1 MAY 1993 p.13
- s.11(2)
K0105-04
Volume 3:1 MAY 1993 p.12
- s.11(3)
K0530-15
Volume 3:1 MAY 1993 p.12
- s.12
K1120-14
Volume 3:1 MAY 1993 p.11

Ontario Regulation 318, R.R.O. 1980

- s.2(5)
K0715-32
Volume 3:1 MAY 1993 p.7
- s.5(b)
K1027-32
Volume 3:1 MAY 1993 p.9
- s.8
K0820-01
Volume 3:1 MAY 1993 p.6
- s.13(1)
K0715-32
Volume 3:1 MAY 1993 p.7

- s.13(2)1
J0313-15R
Volume 3:1 MAY 1993 p.8
- s.13(2)7
J0313-15R
Volume 3:1 MAY 1993 p.8
K0715-32
Volume 3:1 MAY 1993 p.7
- s.14(3)
L0420-16
Volume 3:1 MAY 1993 p.4

Ontario Regulation 441, R.R.O. 1980

- s.1(1)(n)(ii)
K0117-06
Volume 3:1 MAY 1993 p.10
- s.3(1b)
K1117-09
Volume 3:1 MAY 1993 p.16
- s.3(3)(b)
L0602-17
Volume 3:1 MAY 1993 p.5
- s.6(1)(c)
K1117-09
Volume 3:1 MAY 1993 p.16
- s.12(2)7
K0513-08
Volume 3:1 MAY 1993 p.13
- s.13(1)(a) and (b)
K0326-25
Volume 3:1 MAY 1993 p.15
- s.13(2)1
K0513-08
Volume 3:1 MAY 1993 p.13
- s.13(2)13
K0326-25
Volume 3:1 MAY 1993 p.15

Vocational Rehabilitation Services Act

- s.9(b)
L0525-16
Volume 3:1 MAY 1993 p.17
- s.9(c)
L0525-16
Volume 3:1 MAY 1993 p.17

REFERENCES TO MANUALS

Family Benefits Policy and Procedural Guidelines Manual

Policy 0203-02
K0513-08
Volume 3:1 MAY 1993 p.13

Policy 0503-03
K1120-14
Volume 3:1 MAY 1993 p.11

General Welfare Policy Guidelines

GW 0304-03
K0513-08
Volume 3:1 MAY 1993 p.13

DEFINITIONS

"dependent for support and maintenance"
K0513-08
Volume 3:1 MAY 1993 p.13

"living with"
K0117-06
Volume 3:1 MAY 1993 p.10
K0513-08
Volume 3:1 MAY 1993 p.13

"on behalf of"
K0715-32
Volume 3:1 MAY 1993 p.7

"residence"
K0715-32
Volume 3:1 MAY 1993 p.7

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**SOCIAL
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**SUMMARIES OF
DECISIONS**

Volume 3, Number 2

July 1993



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Summaries of Decisions is a collection of summaries of selected decisions of the Board. It is published four times per year and is distributed free of charge. Instructions for obtaining copies of the decisions summarized in each issue appear on the last page of this publication.

ORGANIZATION

This publication is divided into three parts. Part I contains summaries of decisions that relate to the Family Benefits Act. Part II contains summaries of decisions relating to the General Welfare Assistance Act, and Part III contains summaries of decisions relating to the Vocational Rehabilitation Services Act.

Each decision summarized in this publication is assigned a number of different index terms which reflect its content. The summaries appear under the one heading which best expresses the most noteworthy issue under discussion in each decision. This heading is in **BOLD** type at the beginning of each summary. These headings are arranged in alphabetical order within Part I, Part II, and Part III.

Other index terms which apply to a decision are listed separately to provide a further indicator of content.

Example:

CATEGORICAL ELIGIBILITY

OTHER INDEX TERMS: JOINT CUSTODY; RECONSIDERATIONS;
SINGLE PARENT WITH DEPENDENT CHILDREN

FILE NUMBERS

Each decision is identified by an alphanumeric File Number which appears on the summary in **BOLD** type. This number should be used to identify SARB decisions or to order copies. All decisions from Hearings on Reconsideration have the letter R added to the end.

Example:

File Number: F0927-16R

DATE OF HEARING

This date provides an indicator of the age of the decision.

THE SUMMARIES

Each summary is a brief statement of the most important facts of the decision and of the findings of the Board. It is not a guide to the arguments presented by the parties or to the Board's reasoning and analysis. For full insight into these matters readers must consult the full text of the decision. Instructions for obtaining copies of decisions appear on the last page of this publication.

The disposition of the case, the number of pages in the full-text version of the decision, and the language in which the decision was written appear as the last sentence in the summary. Certain decisions have both an English and French language version available.

Example:

Appeal denied. (16 pp English; or 18 pp French)

REFERENCES

These references are to documents and authorities considered in and commented on in some detail by the Board in its findings. They are further indicators of the relevance of the decision. The list may include, in this order: federal and provincial statutes, regulations, cases, books, treatises, and manuals. Terms whose meanings are discussed in a significant way appear in quotation marks at the end of the list.

Example:

General Welfare Assistance Act s.7(1); Re Richardson and the Commissioner of Metropolitan Toronto Department of Social Services (1988), 46 O.R. (2d) 63; "reside"

CUMULATIVE INDEX

A cumulative index to this publication is included with each issue. Use it to find summaries of decisions on specific subjects of interest to you.

References to summaries in the current issue are integrated with references from preceding issues in this list. Therefore, the most recent index can also be used to find decisions summarized in previous issues. KEEP YOUR BACK ISSUES FOR FUTURE REFERENCE. At the beginning of each volume we will begin a new index.

The cumulative index is divided into the same three parts as the rest of the publication. Part I of the index refers to the Family Benefits Act. Part II refers to the General Welfare Assistance Act, and Part III to the Vocational Rehabilitation Services Act.

The index is arranged in alphabetical order by subject within each of the Parts. Each decision appears under several different index terms to provide a detailed guide to its content. Note that headings are of many different types. Factual, procedural, and conceptual terms are used and the names of statutes or programs may also appear as index terms.

Example:

| | |
|--|--------------|
| DRUG BENEFIT | (factual) |
| EXTENSION OF TIME | (procedural) |
| ONUS | (conceptual) |
| <u>CANADIAN CHARTER OF RIGHTS AND FREEDOMS</u> | (statute) |
| S.T.E.P. | (program) |

HOW TO USE THIS PUBLICATION

The index terms are upper case. The line below shows the File Numbers of all of the decisions which contain information on these subjects.

Example:

EXTENSION OF TIME

H0321-05

Volume 2:3 OCT 1992 p.5

Information under the File Number shows where that particular summary originally appeared in our publication. The issue number and date and the page number are provided. ■

PART I

DECISIONS UNDER THE FAMILY BENEFITS ACT

HANDICAPPED CHILDREN

Other Index Terms: DISCRETION

File Number: L0722-21

Date of Hearing: March 10, 1993

The Appellant received \$210 per month in Handicapped Children's Benefit for her 8-year-old son, who was blind and suffered from cerebral palsy. During an annual review, the amount was reduced to \$35 per month because of an increase in family income. The Appellant asked the Board to review this decision and to consider the needs of the child instead of simply applying a policy.

At the time when the allowance was first granted the family income was \$49,839. The annual review indicated that family size had remained the same, that eligible expenses were \$351.05 per month, and that family income had risen to \$58,119. The mother testified that although her husband's annual income was adequate, her child's needs were great and the reduction in benefits had resulted in financial hardship.

The legislation gives the Director

discretionary power to determine the amount paid, within a range from \$25 per month and \$375 per month. Nothing in the legislation establishes how much the benefit will be. The Director is required to consider factors such as the child's age, the extent of the handicap, the expenses related to the handicap, the family income, and other extraordinary costs or factors.

The Director's policy guidelines attempt to distribute benefits as fairly as possible. Although the Board is not bound by policies developed by the Director, it is reluctant to strike down a policy unless it conflicts with the legislation, unless there is evidence that the Director fettered his discretion, or unless there is evidence to show that it would be unreasonable to apply the policy in a particular case. In the opinion of the Board the payment schedule in question, although not legislated, appears to be in conformity with the legislation.

At the hearing, the Appellant called upon the Board to consider her family's particular needs and asked that the Board not be bound by the payment schedule. The Board endeavoured to do so but found that there was insufficient evidence to strike down the payment schedule in this particular case. The actual expenses directly related to the child's handicap were set by the Director at \$351 per month. The Appellant suggested that actual costs were closer to \$400 per month. Had these actual costs been substantially higher than the maximum payable, the Board might have considered increasing the amount. The Board

FAMILY BENEFITS ACT

concluded that the facts of this case did not make it unreasonable for the Director to apply the payment schedule. **Appeal denied. Decision of the Director affirmed.** (7 pp; English)

REFERENCES: O.Reg. 318 s.38(1), 38(2)■

JOINT CUSTODY

Other Index Terms: DEPENDENT CHILD

File Number: L0524-26

Date of Hearing: December 23, 1992

The Appellant applied for an allowance as a sole-support parent who had joint custody of two dependent children. The separation agreement stipulated that both parents were equally responsible for the children and had equal access to the children, who changed residences each week. The father was unable to provide financial support to the Appellant because he received Family Benefits as a sole-support parent. The mother received General Welfare Assistance for herself and one child.

The Director found her ineligible for a number of reasons. Since her children were already receiving a benefit under the Act, they were unable to receive it twice. Another factor was that the Appellant's spouse received the Child Tax Credit. The Director also considered which parent was responsible for education and health. When questioned, the Director's

representative stated that none of these factors is outlined in the legislation; they are found in the policy manual.

The Director determined that the Appellant was not the main provider of care for her children and found her ineligible for an allowance. The Director's position was that there could not be a duplication of benefits, nor could benefits be pro-rated. Counsel for the Appellant pointed out that this suggests that if one parent is considered a sole-support parent, the other parent is automatically considered ineligible. It would appear that the parent who applies for the allowance first receives the benefit.

It was necessary to first determine whether the Appellant was the parent of a dependent child. As stated in a previous decision, H1112-16, the Board can consider areas other than strictly financial ones when determining whether a parent "supports" his or her child. There must, however, be a significant degree of support in order to find that a child is a "dependent child" as defined in the legislation. In this case, both parents were granted joint custody of both children. They shared equal time in the support, nurturing, parental care, and social development of their children. The Appellant supported her children by providing accommodation, food, clothing and other necessities for both children. She attended to their health and educational needs. Moreover, because of the arrangement for the children's residence, she had primary care of them for a substantial period of time. The Board concluded that the Appellant

provided significant financial and emotional support to her children and that they were dependent children within the meaning of the Act.

The Board found that nothing in the legislation specifically prevents the Director from considering both parents as sole-support parents with dependent children. The purpose of the legislation is to ensure that children are given shelter and support. In this case both parents had the same needs and requirements that the *Family Benefits Act* is intended to remedy. The Board concluded that an allowance should be paid to the Appellant as a sole-support parent.

The Board agreed with the Director that the allowance should not be pro-rated. To do so would make both parents incapable of supporting their children. The Board concluded that the amount stipulated by the legislation for a sole-support parent with dependent children must be paid to the Appellant. To diminish or deduct from the legislated amount would undermine the intent and purpose of the Act.

The Board recognized that if both parents received a benefit for the same children the result is a potential double payment of benefits for these children in relation to the children of other recipients. Nevertheless, the Board must decide what remedy is more consistent with the purpose of the legislation. The Board concluded that since the legislation does not explicitly prohibit granting an allowance to more than one parent, the Director's interpretation unduly restricted both the wording of the legislation and its

social and economic purpose. **Appeal granted. Decision of the Director rescinded.** (16 pp; English)

REFERENCES: *Interpretation Act* s.4; O.Reg. 318 s. 2(7); *Auckland v. Yonge-Esplanade Enterprises Ltd.* (1992), 10 O.R. (3d) 97; *Cash v. George Dundas Reality Ltd.* (1973), 1 O.R. (2d) 241; *Re Kerr and the General Manager, Department of Social Services of Metropolitan Toronto* (1991), 4 O.R. (3d) 430 (Div. Ct.); *Vic Restaurant Inc. v. City of Montreal*, [1958] 17 D.L.R. (2d) 81; Pierre Coté, *The Interpretation of Legislation in Canada* ■

JOINT CUSTODY

Other Index Terms: DEPENDENT CHILD; JURISDICTIONAL ISSUES

File Number: L0629-19

Date of Hearing: June 2, 1993

The issue in this appeal was whether the Appellant's child was a dependent child and whether the Appellant was eligible to have this child added to the allowance he was already receiving as the sole-support parent of a child by a different mother.

When the Appellant and his spouse separated the court gave both parents joint custody. The child's time was divided near or almost equally between the parents. Both parents were in receipt of allowances as the sole-support parents of children from other unions; the Appellant's wife had applied for and

FAMILY BENEFITS ACT

received the allowance for the child in question in this case.

Counsel for the Director argued that the legislation does now allow for pro-rating the allowance for the same child between two parents, or providing the full allowance to two parents for the same child. The definition of "dependent child" in the Act indicates that the child must be "supported by a mother, father or a person who stands *in loco parentis* to the child"; counsel for the Director submitted that the word "or" must be read disjunctively. That is, a dependent child can create eligibility for its mother or father but not both. The purpose of the legislation is not to create new categories of eligibility in response to new ways of managing family breakdown. The Director further submitted that the Board lacked jurisdiction to provide entitlement to two persons for the same child.

Concerning pro-rating, counsel for the Director argued that pro-rating might lead to children in joint custody receiving up to twice the support of other dependent children, to neither parent being required to seek work, and to neither parent having enough money to meet the child's needs. He indicated that the legislature should be responsible for designing a solution to this problem.

The Director further submitted that since only one parent can be eligible, it is critical to determine which parent meets the criteria. In this case, the Director determined that the mother had the primary responsibility for the child.

Counsel for the Appellant argued that responsibility for the child was evenly divided between the two parents and that the legislation does not specifically state that there can be only one "supporting" parent of a child. The legislation should be interpreted liberally to encourage couples who have separated to maximize their support of their child.

In this case both parents were already dependent on Family Benefits, therefore there was no question of whether the child would enable two parents to qualify for benefits. This indicated to the Board that neither parent had the financial means to fulfil his or her responsibility for the child unless she were added to their Family Benefits budgets.

The Board found that the child met the definition of a "dependent child" because she was the Appellant's daughter and was supported by him.

The Board then addressed the Director's argument that two parents cannot receive benefits for the same child. After considering several authorities, it appeared to the Board that the word "or" in the definition of "dependent child" could be read either disjunctively or non-disjunctively. A disjunctive reading has an exclusive and restrictive meaning whereas a non-disjunctive reading has an inclusive and less restrictive meaning.

In the Board's opinion, a non-disjunctive reading is more appropriate. Nothing in the legislation compels a disjunctive reading; moreover, the Divisional Court has stated that social assistance legislation

must be interpreted in a way that enhances rather than restricts the rights of appellants. Nowhere in the Act does it state that two persons cannot be eligible to receive benefits for the same child and, in the view of the Board, making such a finding would mean that one parent's ineligibility would be dependent on the eligibility of the other parent.

The Board did not agree with the Director's submission that the mother was the parent with the primary responsibility for the child. The child's care was divided equally between the parents; moreover, a court of competent jurisdiction had ordered an equal sharing of responsibility and the Appellant was seeking to fulfil his obligation. The Board concluded that it should avoid an interpretation of the legislation that would deprive him of the means to fulfil that obligation. **Appeal granted. Decision of the Director rescinded.** (6 pp; English)

REFERENCES: *Family Benefits Act* s.1(f); *Kerr v. General Manager, Department of Social Services, Metropolitan Toronto* (1991), 4 O.R. (3d) 430 (Div. Ct.)■

LIQUID ASSETS

Other Index Terms: FAILURE TO PROVIDE INFORMATION

File Number: L0229-07

Date of Hearing: October 22, 1992

The Recipient was granted an allowance as a sole-support parent. The Director

suspended the allowance because he had liquid assets in excess of the maximum amount and because he failed to provide the information required to determine continuing eligibility.

While working for a communications company, the Recipient and two co-workers set up a corporation and became its directors. After the Recipient lost his job, he began to work for this corporation and he also handled its financial affairs.

The company was profitable and had deposited \$8,000 in a term deposit at an earlier time. While the Recipient's application stated that he had an interest in the corporation, it did not list any shares, term deposits, or other investments. He testified that he did not report the term deposit because it belonged to the corporation, not to him personally. Nor did the Recipient report any employment or business income or any personal investments on his application.

The Recipient testified that he had sold a woman some equipment and had done so in his own name to avoid tax. The customer was in the business of selling Registered Retirement Savings Plans and agreed to pay her \$4,000 bill by paying into a plan for the Recipient. The Recipient did not contact the Family Benefits office to advise them of this. The Recipient later wrote a cheque on the bank account of his corporation and used the money to purchase certain stocks. Some details provided on a later Client Information Update report caused the Director to request further information

FAMILY BENEFITS ACT

from the Recipient.

The Board did not agree with the Recipient's argument that the income or assets of the corporation were not relevant. In the view of the Board it would be contrary to the purpose of the legislation to allow applicants or recipients to hide income or assets in a corporation in order to be eligible. According to the legislation, recipients must make reasonable efforts to obtain any compensation that might be available to them. In the Board's opinion, this includes compensation that is available from a corporation.

Second, there was no evidence that the Recipient was prevented from receiving compensation for his interest in the company. He was, in fact, in charge of its financial affairs and sometimes wrote cheques for the other directors when they needed money.

The Board concluded that the Recipient did not provide sufficient information to establish his continuing eligibility. **Appeal denied. Decision of the Director affirmed.** (11 pp; English)

REFERENCES: O.Reg. 318 s.1(1)(a), s.8 ■

LIQUID ASSETS

Other Index Terms: OVERPAYMENTS

File Number: K1027-04

Date of Hearing: April 2, 1993

The Director determined that the

Appellant was ineligible for an allowance for a certain period of time because her assets were in excess of the allowable limits during the period in question.

When the Appellant made her application, she reported liquid assets that included a trust company account. At the time when the Director cancelled her allowance she explained that her trust company account was actually a Registered Home Ownership Savings Plan. One of the terms of the account was that if the plan were cashed for reasons other than the purchase of a home, the financial institution would automatically hold back 25 percent of the account. This amount is used to deduct any tax credits and interest realized by the account holder if the account is not used for the purpose intended. The account holder receives the balance after these deductions are made.

At her hearing, the Appellant stated that she had not made a deposit into the plan for some time because she believed that she would never be in a position to purchase a home. She argued that if the Director did not consider the hold-back amount when assessing the value of the account, her assets would not be in excess during the period in question.

The Board agreed that the hold-back amount should not be included in the real value of the plan. The Appellant had claimed her tax credits for the years when she held the account. Were she to have liquidated the account, the amount she had received in tax credits would have exceeded the hold-back amount. Moreover, deducting the hold-back

amount meant that her asset level for the period in question was never in excess.

Appeal granted. Decision of the Administrator rescinded. (7 pp; English)

REFERENCES: none■

PARTIES

Other Index Terms: BENEFICIARIES; DEPENDENT CHILD OR CHILDREN; PROCEDURES; RECONSIDERATIONS

File Number: J1002-03R.1

Date of Hearing: May 11, 1992

The Applicant applied for Family Benefits as a sole-support parent with one dependent child. The Director found her ineligible on the grounds that she was living with a man who was her spouse within the meaning of the legislation.

At the hearing, the Board found that the Applicant and her 12 year old daughter shared a house with a married couple and their child. The husband was also the father of the Applicant's daughter. The Board concluded that the man was not the Applicant's spouse and rescinded the Director's decision.

The Director asked the Board to reconsider its decision respecting the Applicant and the Board agreed. The Applicant's daughter asked to be added as a party to this hearing. The Applicant consented but the Director opposed her request. The preliminary issue was whether the daughter should be added as a

party to the reconsideration hearing.

The daughter's legal representative submitted that the daughter should be a party to the hearing as of right. The Board did not agree for two reasons. First, although the Board has discretion to add other parties, s.14(4) clearly provides that the Director and Applicant are the parties. It does not give party status to beneficiaries. Second, it is the Board's view that giving party status to beneficiaries as of right would not be consistent with protecting the privacy interests of applicants and recipients. Although there may be good reasons to involve a dependant in a hearing, it is not clear that dependent children have a right to hear the kind of personal details about their parents that may arise during a hearing.

The daughter's representative also argued that her client would have party status as of right according to s.5 of the *Statutory Powers Procedure Act* if she was "entitled by law", and that because the hearing dealt with her only source of income, the Applicant's daughter met this test. The Board disagreed with this interpretation of s.5 and found the case law presented to be distinguishable.

Although the Board concluded that the Applicant's daughter did not have party status as of right, it has the authority under s.14(4) to add her as a party. However, the Board decided that it was not necessary or desirable to do so. The submissions indicated that the daughter supported her mother's position and that her legal arguments would be very similar

FAMILY BENEFITS ACT

to her mother's; it was not clear that she required the right to cross-examine witnesses or present evidence other than her own testimony. The Board was also concerned that granting party status would offer the daughter an independent right of appeal to the Divisional Court, and decided that the Applicant herself should have control of this.

The Board concluded that it was important that the Applicant's daughter have an opportunity to participate in the hearing and express her views, but in the Board's opinion this did not require party status. The Board ordered that the daughter could be present at the hearing and could be represented by a legal representative who might also be present during the hearing. The daughter would be limited to giving oral evidence as a witness but would not be entitled to call other witnesses without the permission of the Board. Finally, the legal representative of the daughter could make final submissions with respect to the Applicant's eligibility. **Request to be added as a party denied.** (9 pp; English)

Note: This case is further discussed in File J1002-03R.2.

REFERENCES: *Family Benefits Act* s.14(4); *Ministry of Community and Social Services Act* s.12(1); *Statutory Powers Procedure Act* s.5; *Re Doctors Hospital and Minister of Health et al* (1976), 12 O.R. (2d) 164 ■

PAYMENTS RECEIVED

Other Index Terms: INCOME; SUPPORT OR MAINTENANCE PAYMENTS

File Number: K1111-12

Date of Hearing: November 17, 1992

The Recipient, a permanently unemployable person, was 37 years old and suffered from a developmental disability. He lived with his mother, who did not receive an allowance.

After a court settlement, the Recipient's mother began to receive support payments of \$100 per week. The Director determined an overpayment and began to deduct \$433 per month from the Recipient's allowance. The mother's position was that the support payments were her money, not the Recipient's.

The support order was awarded under the *Divorce Act*. The Recipient's mother had petitioned for support on the grounds that the Recipient was a "child of the marriage" under that Act. However, according to her testimony, the Recipient's father was extremely hostile during the court session and the family feared that this might be the only time that they could get him to court. They therefore decided to pursue the motion for support for the Recipient first and to adjourn the motion for support for the mother. It was always the family's view that the support ordered was for the Recipient's mother, to cover the extra expenses that resulted from staying with her son.

The mother testified that if she did not have her son with her she would have been able to get cheaper accommodation in a senior citizens' residence. She also had to have a car because she could not take him on the bus. Moreover, she could not leave him alone because of the seizures that he experienced; therefore, she could not go to work. Her income consisted only of Canada Pension Plan payments and the support payments. She testified that the Recipient's Family Benefits allowance before the support payments were deducted covered his expenses but did not cover any of her expenses. A functional analysis of how the money was spent confirmed this.

In the Board's view, an examination of certain cases, notably *Harrington v. Harrington* (1981), 33 O.R. (2d) 150, leads to the conclusion that the State bears the primary responsibility for the support of disabled adults, not the parents. At the time of the court action the son was already receiving an allowance. In the Board's opinion, it is not reasonable to conclude that the parties to the court action intended that the son's income be reduced and the mother receive no income after many years of marriage. Rather, the intent was to enable the mother to care for the son.

The Board further reasoned that the *Divorce Act*, 1985 s.2(1)(b) suggests that the parental role is integral to the definition of a "child of the marriage". Such a child is "unable, by reason of ... disability ... to withdraw from their [i.e., the parents'] charge or to obtain the necessities of life". Thus, being in the

charge of a parent is viewed as a form of support. This section does not specify that support payments are for financial maintenance. "Necessaries of life" can encompass financial necessities, companionship, care-giving, and opportunities for well-being. In the Board's view, the support payments permit her to remain with him and to care for him, not vice versa. There is no directive in the legislation requiring the mother to spend the funds on her son or to turn the funds over to him.

At the hearing, many interpretations of "payments received ... on behalf of" were discussed. In the Board's opinion, the fact that a child reaps some sort of benefit or advantage from the support payments does not mean that the payments are the child's money. The Board concluded that although this award may be called "child support" for the purposes of divorce law, the money can be shown to be used to provide for the mother's expenses. To characterize the money as belonging to the Recipient leads to an absurd result. The Recipient would be institutionalized without his mother's care, thereby increasing his dependence on the State and possibly leading to the situation where the mother also became dependent on the State. **Appeal granted. Decision of the Director rescinded.** (11 pp; English)

REFERENCES: *Divorce Act*, 1985 s.2(1)(b); *Re De Lima and the Minister of Community and Social Services*, [1973] 2 O.R. 821; *Harrington v. Harrington* (1981), 33 O.R. (2d) 150; "support" ■

FAMILY BENEFITS ACT

RECONSIDERATIONS

Other Index Terms: JURISDICTIONAL ISSUES; SPOUSE

File Number: J1002-03R.2

Date of Hearing: October 14, 1992

The Applicant began living with Mr. and Mrs. A. when she was 16 years old. Several years later, she became pregnant with Mr. A.'s child. After the birth of her child, she and her daughter continued to live with them and their children. The Applicant lost her job in 1989 and applied for an allowance as a sole-support parent. She declared that Mr. A. was the putative father of her daughter but that he also was receiving Family Benefits and there was no agreement for him to provide support. The Director decided that the Applicant was ineligible for an allowance because she was living with Mr. A., a man who was considered to be her spouse. The Board found that Mr. A. was not the Applicant's spouse because he did not have an obligation to support the Applicant or her daughter. The Director requested a reconsideration hearing.

The first issue before the Board was whether this hearing should be held. A reconsideration hearing is granted where there has been a clear error of law. The original panel had concluded that "not only is Mr. A. incapable of providing support, but his Family Benefits allowance cannot be taken into account because of s.33(9)(m) of the *Family Law Act*." The Board concluded that using section 33(9)(m), which deals with the financial position of the dependant, to

interpret sections 30 and 31 of the *Family Law Act* was an error of law, and agreed to the reconsideration.

According to the Regulation under the *General Welfare Assistance Act*, Mr. A. was the Applicant's spouse if he had an obligation to support the Applicant or her daughter under the *Family Law Act*. The legal representative for the Applicant's daughter argued that the obligation to provide support arises only when the parent has the ability to pay it; therefore, Mr. A., as a recipient of Family Benefits, had no ability to pay support and no obligation to provide it. The Board concluded that the ability to pay affects only the quantum and not the obligation to pay. Mr. A. had an obligation to support the child under s.31 of the *Family Law Act* and was therefore a spouse within the meaning of the General Welfare Assistance Regulation.

Moreover, in the Board's view, the Applicant, her daughter, and the A. family formed a household unit. Although they were not the traditional nuclear family, they functioned as a family, sharing the house, the household duties and the household activities. The Board concluded that the Applicant was living with her spouse, and was therefore ineligible for Family Benefits as a single parent.

In the Board's opinion, this case illustrates the difficulty of having benefits depend on family status. People in financial need have many different "family" arrangements and poverty sometimes necessitates the formation of extended household units. In this case the

SUMMARIES OF DECISIONS

Applicant did not consider herself to be "living with" Mr. A. Rather, she lived with her daughter and her daughter lived with her father because it was in her best interest to do so. However, an ordinary reading of the legislation suggests that it limits eligibility to those who do not live with someone who has an obligation to support their dependent children. **Original decision of the Board rescinded. Original decision of the Director affirmed.** (26 pp; English)

REFERENCES: *Children's Law Reform Act; Family Law Act* s.30, s. 31(1), s.33(9)(a), s.33(9)(m); Pierre Coté, *The Interpretation of Legislation in Canada*; "living with", "spouse" ■

TRUSTS

Other Index Terms: CREDIBILITY

File Number: K1226-12

Date of Hearing: November 3, 1992

The Recipient was a permanently unemployable person. Following the death of her mother, she received a sum of money from her estate. After paying funeral and other expenses, the Recipient transferred the remaining \$71,000 to a trust for the benefit of her sons. It was an irrevocable trust and the Recipient was the trustee.

The Director had cancelled her allowance because her liquid assets exceeded the allowable limit. However, after learning of the trust the Director deemed that the transfer had been made in order to qualify for an allowance.

The Recipient submitted that she had created the trust in order to fulfil the last wish of her mother. The written will stated that the money was to be given to the Recipient "for her own use absolutely". However, three weeks before her death the mother told the Recipient that she wished the Recipient's children to be the beneficiaries and the Recipient to maintain control over the funds. There was no written documentation of this request. The discrepancy between the written will and the last wish of the Recipient's mother was, therefore, the central issue in this appeal.

The Recipient's legal representative argued that the last wish of the Recipient's mother superseded the written will and placed a moral obligation on the Recipient to transfer the money to the children, while maintaining control over it for an extended period of time. The legal representative concluded that the discussion between the Recipient and her mother had established a "secret trust".

The Board agreed with the Director that the deathbed wish of a testator that is not written down, signed and witnessed, does not alter or revoke an existing valid will. However, such a deathbed wish can create a secret trust outside of the last will and testament under certain circumstances. In this case the Recipient's testimony was the only evidence of a secret trust and the Board found her to be credible.

The Recipient stated that her mother's decision had been influenced by the fact that the Recipient received a Family Benefits allowance which gave her some

FAMILY BENEFITS ACT

financial stability. However, in the view of the Board, this did not amount to an effort on the part of the Recipient to qualify for an allowance. The legislation seeks to regulate the decisions of the Recipient or her beneficiaries but not those of her mother.

The Board decided that a secret trust had been established and that the Recipient had a moral obligation to act according to her mother's wishes. The Recipient's allowance should not have been cancelled either for assets in excess or for the improper disposal of assets. **Appeal granted. Decision of the Director rescinded.** (8 pp; English)

REFERENCES: *Knight v. Knight* (1840), 49 E.R. 58; Waters, *Law of Trusts in Canada*; *Halsbury's Laws of England* (4th ed.), vol. 48 ■



PART II

DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT



EVIDENCE

Other Index Terms: CO-RESIDENCE;
OVERPAYMENTS

File Number: K0306-10

Date of Hearing: January 19, 1993

The Recipient had been living with her

family but wanted to be on her own. She realized that the amount of money she was entitled to for rent meant that she would have to share accommodation with other co-residents. She found an apartment where the rent was \$750 per month plus utilities. Because she could not afford it on her own she asked her welfare worker for advice. The worker helped her to work out a formula for covering the cost of the apartment. They agreed that she would charge the co-residents a total of \$600 per month without utilities. The Recipient would pay the balance of the rent and the utilities.

Through advertising she found two co-residents, a man and his girlfriend. The welfare department issued a cheque to the landlord for \$325 for the first and last month's rent. After moving in, difficulties began immediately. The male co-resident had a fight with the landlord and there was violence between himself and his girlfriend.

Someone then informed welfare that the Recipient was working nights in a doughnut shop. In a letter to the Administrator, one of the co-residents reported that he had paid the Recipient \$1,200 for the first and last month's rent and that he had been evicted because the Recipient had not paid this rent to the landlord. The landlord told the department that the Recipient was subletting the apartment and living with her daughter at another address. After reviewing her file for possible fraud the Administrator imposed an overpayment which took into account the last month's rent, rental income in excess of entitlement, and the

SUMMARIES OF DECISIONS

Recipient's shelter costs. The issue was whether the Administrator was correct in charging this overpayment.

The Recipient testified that she had not withheld facts, that she did not sublet the apartment, and that there had been no eviction. However, one day the locks were changed and all the tenants' possessions removed. She testified that she had never received an eviction notice nor had any legal proceedings been commenced. The landlord simply refused to explain his actions. Moreover, the Recipient testified that she did not have a job but sometimes babysat for her daughter all night. Lastly, she explained that the \$1,200 collected from the co-residents had been paid out to cover, with the addition of the cheque from the welfare department, the first and last month's rent, and installation fees for cable television, telephone, and other utilities.

In making a decision in this case, the Board weighed the Recipient's sworn testimony against a hearsay statement of the landlord and a letter from the co-resident. The Administrator was not represented at the hearing and there was no evidence that statements had been taken from these people or that a thorough investigation had been done. The Board accepted the testimony of the Recipient and concluded that she did not receive monies to which she was not entitled and therefore did not incur an overpayment. **Appeal granted. Decision of the Administrator rescinded.** (7 pp; English)

REFERENCES: none ■

FAILURE TO PROVIDE INFORMATION

Other Index Terms: DISCRETION; ONUS; REFUGEES

File Number: L0416-04

Date of Hearing: January 13, 1993

When mail sent to the Recipient was returned to the Department, his assistance was placed on hold until he verified his new address. He contacted the Department to do so and was advised that he would require a lease or rent receipt to verify his monthly shelter costs and documentation confirming his immigration status in Canada. He submitted verification of his shelter costs but did not provide documentation regarding his immigration status. As a result, his assistance was cancelled.

When he reapplied he still did not have his immigration documents and was therefore deemed ineligible on that same day. The Department later received the necessary documentation and he was granted assistance. The Recipient appealed both the decision to cancel his assistance and the decision refusing to grant him assistance.

In both cases the Administrator relied on section 10(2)(b) of the *General Welfare Assistance Act* to support the denial of assistance. The Board noted that the power under this section is discretionary. In determining whether the discretion had been exercised properly, the Board gave consideration to what information the Administrator had requested and the steps

GENERAL WELFARE ASSISTANCE ACT

taken to comply with the request.

The Recipient submitted that he had provided the information as quickly as possible. When he brought his lease into the office he had also brought the original immigration documentation supporting his refugee claim. The Administrator, however, requested more recent information. The Recipient testified that he contacted his lawyer that very day but that it had taken him nearly a month to obtain the documents from the government. When he then took them to the office the worker would not see him without an appointment, causing further delay.

In the view of the Board, it was reasonable for the Administrator to request such documents. However, when provision of the information is not within a recipient's control a reasonable amount of time must be allowed to obtain that information. If a recipient has taken reasonable steps to get it and the information is not immediately available, it is not reasonable to terminate assistance. If, in the Board's opinion, there is reason to believe that a recipient is not actively pursuing the necessary information the administrator may then consider suspending assistance.

In this case, there was no evidence that the Recipient had ignored requests for information. Moreover, the time needed to obtain the new immigration documents was not within the Recipient's control and, in the view of the Board, he should not be penalized for the delay. The Board observed that the Administrator had not

warned him in advance that his original immigration papers were no longer sufficient. While the Board agreed that the onus was on the Recipient to provide the information, the Recipient had provided what he could as quickly as possible and had made reasonable efforts to obtain the rest. If the Recipient's word was not accepted until the written documentation arrived, the onus switched to the Administrator who could contact the immigration authorities. **Appeal granted. Decision of the Administrator rescinded.** (10 pp; English)

REFERENCES: *General Welfare Assistance Act* s.10(2)(b)■

INCOME

Other Index Terms: S.T.E.P.

File Number: L1029-44

Date of Hearing: April 14, 1993

The Recipient and her family received General Welfare. The Recipient's husband began working as a driver for a taxi company. The job involved renting a taxi and a license plate against a daily stand fee, which is paid whether the cab is driven or not.

When computing the Recipient's entitlement, the Administrator determined that the husband's business expenses were to be treated as income. The Recipient appealed this decision.

In the Board's opinion, the legislation is clear. The only persons entitled to have

SUMMARIES OF DECISIONS

business expenses taken into consideration when calculating income are unemployable persons and single parents. The Recipient's husband was neither. The Administrator, however, had neglected to deduct that portion of the business expenses which covered Unemployment Insurance premiums. The Board directed that the Recipient's entitlement should be recalculated. **Appeal denied in part.**

Decision of the Administrator affirmed in part. (5 pp; English)

REFERENCES: O.Reg. 537 s.15(2) ■

JOB SEARCH

Other Index Terms: DISCRETION;
EMPLOYABLE PERSON

File Number: L0318-01

Date of Hearing: December 15, 1992

The Recipient was first granted assistance as an unemployed but employable single person. She later found work and her income from earnings was supplemented under the *General Welfare Assistance Act*. After she was laid off she began to receive Unemployment Insurance benefits, which were also supplemented under the Act.

Her father suffered a severe stroke and the Recipient assumed responsibility for his care in her home. She advised the Administrator that she could no longer make herself available for or look for employment as required by the legislation. The Administrator terminated her assistance.

While the legislation provides that an employable person may be permitted to remain at home in certain circumstances, these provisions did not apply to the Recipient. Moreover, she testified that she was *unwilling* to look for or accept employment because she was caring for her father. The Board agreed with the Administrator that the Recipient had not satisfied the job search requirements.

However, in the view of the Board, the Administrator was then required to consider subsection 3(3) of Regulation 441 which gives the Administrator discretionary powers to deny assistance, reduce the amount of assistance, or to do neither. When exercising this discretionary authority, the Administrator must take into account all the circumstances, including any special circumstances, which make it unreasonable to deny assistance.

The Board concluded that because of the circumstances in this case, the Administrator should have exercised his discretionary power in favour of the Recipient so that she could continue to care for her father at home. In the Board's view this would be a cost effective solution which is consistent with the recent shift away from institutional care for the elderly when care in the family home is available.

The Board was satisfied that the Recipient's father would best be cared for by the Recipient in her own home. Medical evidence indicated that he required total assistance with dressing, grooming, bathing, and locomotion; he was incontinent and could speak very

GENERAL WELFARE ASSISTANCE ACT

little. His stroke had also caused a significantly altered intellectual function and he was unable of managing his own affairs. The Recipient had applied for both day care and extended care services for her father but they were unavailable and would have been costly to her father and to the province. Moreover, the quality of care would not equal that provided by the Recipient, who had outfitted her home and installed special equipment to accommodate her father.

Finally, the Board noted the Recipient's age, her limited education, and her limited work experience at unskilled jobs. In the Board's opinion, the Recipient's job prospects were very restricted and ongoing welfare support would have been a strong likelihood.

The Board found these factors to be of sufficient persuasion to substantiate a decision to reinstate assistance. **Appeal granted. Decision of the Administrator rescinded.** (10 pp; English)

REFERENCES: O.Reg. 441 s.3(1)(b)(i) and (ii), s.3(3)(a) ■

ONUS

File Number: K1224-03

Date of Hearing: October 15, 1992

The Administrator deemed that the Recipient had received income from the sale of a liquid asset in excess of his entitlement. His assistance was suspended for one month.

A law enforcement agency notified the

Administrator that the Recipient had participated in the sale of a narcotic, for which he had received the amount of \$120.

The participant testified that he did participate in the financial transaction but only as a bystander. He stated that he was visiting a restaurant with friends and was sitting at the bar when an undercover officer gave him some money. After the Recipient and his friend left the restaurant, he gave the money to his friend. The Recipient stated that he did not receive a benefit from this transaction.

The Board did not accept the notion that the Recipient would participate at criminal risk for no remuneration of any kind, but was unable to determine the actual amount of money in question. The Board concluded that the onus was on the Recipient to report any payment of any nature or kind and that the suspension of one month's entitlement was not excessively punitive. **Appeal denied. Decision of the Administrator affirmed.** (4 pp; English)

REFERENCES: none ■

PRINCIPAL RESIDENCE

Other Index Terms: DISCRETION; FAIRNESS; LIQUID ASSETS

File Number: L0403-11

Date of Hearing: March 9, 1993

The Recipient received a property settlement as a result of a separation from her common-law spouse. She received

approval to keep her settlement in order to purchase a principal residence. The Administrator later wrote to advise her that her assistance would be terminated six months after receiving her settlement unless she purchased a home or put an offer on a home before the six months expired. When she did not do so, her assistance was cancelled.

The issue before the Board was whether the Administrator correctly applied the legislation pertaining to liquid assets and whether he properly exercised his discretion regarding the purchase of a principal residence.

The Recipient's legal representative argued that it was unreasonable for the Administrator to put an arbitrary time-limit on the approved exemption of the assets and that there is no policy basis for such a restriction.

In the absence of requirements in the legislation, the Board set out some general principles to establish whether discretion to exempt liquid assets was exercised in accordance with the principles of fairness in this case.

The first question before the Board was whether the terms of approval had been clearly explained by the Administrator and whether the Recipient clearly understood what was expected. The Recipient testified that she did not know that there was a time limit on the exemption until she received the letter from the Administrator. She received no notice in writing nor any written policy.

Secondly, the Board queried whether the Administrator had allowed the Recipient a reasonable amount of time to accomplish what was expected. In the view of the Board the purchase of a home is a major decision that can involve a significant amount of time, especially when the resources available for a down payment are limited and a person has little income to qualify for a mortgage. The Recipient explained that she had begun to look for a home in another part of the province. However, her plans changed because her daughter wanted to remain in the local community and finish her studies, so the Recipient had to begin another search.

Thirdly, did the Recipient take reasonable steps to comply with the expectations of the Administrator? The Administrator did not present any evidence to suggest that the Recipient was not serious in her efforts to find a home. Moreover, she had taken some steps toward her goal.

Lastly, was what was expected of the Recipient fully within her control? The Board found that she was dependent on finding a house that was within her price range, that would meet the needs of her family, for which the bank would give her a mortgage, and that a seller would agree to sell. These things were not within her control.

The Board concluded that the Recipient had made reasonable efforts to find and purchase a home and that six months was not a reasonable time to accomplish this. Therefore the Board, substituting its approval for that of the Administrator, extended the exemption. In the Board's

GENERAL WELFARE ASSISTANCE ACT

opinion, the extension should extend as long as the Recipient continued to provide evidence that she was making a reasonable effort to purchase a home. Moreover, the retroactive assistance payable to reimburse the Recipient for assistance that she did not receive should be protected as a liquid asset for the purchase of a principal residence. **Appeal granted. Decision of the Administrator rescinded.** (9 pp; English)

REFERENCES: O.Reg. 441 s.1(1)(k)■

WAGES, SALARIES, AND CASUAL EARNINGS

Other Index Terms: CASUAL GIFTS OR PAYMENTS

File Number: L0427-13

Date of Hearing: March 31, 1993

The Recipient was an employable person with no dependent children. On his application, he declared himself to be the sole owner of an incorporated business. One of the activities of this business was computer sales. However, the company had been virtually dormant and there were no recent sales. A person who found the Recipient's company listed in the telephone directory bought a printer from him. Apart from the taxes, the Recipient paid \$455 for the printer and charged the client \$515; a mark-up of \$60. The equipment was purchased under the company name so that the Recipient could apply for a refund of the Goods and Services Tax. The Administrator included as income the amount that the Recipient had received for the printer plus the GST

and PST that were to be remitted to the government. The Administrator considered the income to be earnings because the money was made through the business. The Recipient argued that of the total amount which the Administrator had considered to be income, only the \$60 profit could be used for his maintenance. Since the business was inactive and he was not considered to be self-employed, the money he had received was not earnings. In his opinion, the \$60 should have been considered to be a casual payment of small value and excluded from income.

What was the nature of the payment? In the Board's view, although the Recipient's business was inactive and the sale of the printer was happenstance, his income was not a casual payment. The Board concluded that, according to the ordinary meaning of the term "earnings", it was casual earnings which must be considered as income. The Board did not agree with the Administrator's interpretation that the gross amount of the sale should be considered as the Recipient's earnings. Self-employed people are not eligible for assistance and the legislation does not specify how an isolated sale should be treated. However, to consider money which is not available to the Recipient as income, is not, in the Board's view, in keeping with the object of the legislation. **Appeal granted in part. Decision of the Administrator granted in part.** (6 pp; English)

REFERENCES: O.Reg. 441 s.31(2)22; "earnings"■

CUMULATIVE INDEX

This index includes cases published in Volume 3:1 and 3:2 of
SUMMARIES OF DECISIONS

**PART I: DECISIONS UNDER THE
FAMILY BENEFITS ACT**

APPLICATIONS

L0420-16

Volume 3:1 MAY 1993 p.5

ASSIGNMENT

J0313-15R

Volume 3:1 MAY 1993 p.5

AVAILABLE FINANCIAL RESOURCE

L0602-17

Volume 3:1 MAY 1993 p.5

BENEFICIARIES

J1002-03R.1

Volume 3:2 JUL 1993 p.11

CREDIBILITY

K1027-32

Volume 3:1 MAY 1993 p.9

K1226-12

Volume 3:2 JUL 1993 p.15

DAMAGES OR COMPENSATION FOR PAIN AND
SUFFERING

K0715-32

Volume 3:1 MAY 1993 p.7

DEPENDENT CHILD OR CHILDREN

J1002-03R.1

Volume 3:2 JUL 1993 p.11

L0524-26

Volume 3:2 JUL 1993 p.6

L0629-19

Volume 3:2 JUL 1993 p.7

DISCRETION

K0820-01

Volume 3:1 MAY 1993 p.6

L0602-17

Volume 3:1 MAY 1993 p.5

L0722-21

Volume 3:2 JUL 1993 p.5

FAILURE TO PROVIDE INFORMATION

L0229-07

Volume 3:2 JUL 1993 p.9

FOSTER PARENTS AND CHILDREN

K0820-01

Volume 3:1 MAY 1993 p.6

HANDICAPPED CHILDREN

L0722-21

Volume 3:2 JUL 1993 p.5

HOMES, HOSPITALS, AND INSTITUTIONS,
PATIENT OR RESIDENT IN

K0715-32

Volume 3:1 MAY 1993 p.7

INCOME

K1111-12

Volume 3:2 JUL 1993 p.12

INSURANCE

J0313-15R

Volume 3:1 MAY 1993 p.8

K0715-32

Volume 3:1 MAY 1993 p.7

CUMULATIVE INDEX

JOINT CUSTODY

| | | | |
|------------|----------|--|-----|
| L0524-26 | | | |
| Volume 3:2 | JUL 1993 | | p.6 |
| L0629-19 | | | |
| Volume 3:2 | JUL 1993 | | p.7 |

JURISDICTIONAL ISSUES

| | | | |
|-------------|----------|--|------|
| J1002-03R.2 | | | |
| Volume 3:2 | JUL 1993 | | p.14 |
| L0629-19 | | | |
| Volume 3:2 | JUL 1993 | | p.7 |

LIQUID ASSETS

| | | | |
|------------|----------|--|------|
| K1027-04 | | | |
| Volume 3:2 | JUL 1993 | | p.10 |
| L0229-07 | | | |
| Volume 3:2 | JUL 1993 | | p.9 |

ONTARIO MOTORIST PROTECTION PLAN

| | | | |
|------------|----------|--|-----|
| J0313-15R | | | |
| Volume 3:1 | MAY 1993 | | p.8 |

OVERPAYMENTS

| | | | |
|------------|----------|--|------|
| J0313-15R | | | |
| Volume 3:1 | MAY 1993 | | p.8 |
| K1027-04 | | | |
| Volume 3:2 | JUL 1993 | | p.10 |

PARTIES

| | | | |
|-------------|----------|--|------|
| J1002-03R.1 | | | |
| Volume 3:2 | JUL 1993 | | p.11 |

PAYMENTS RECEIVED

| | | | |
|------------|----------|--|------|
| K0715-32 | | | |
| Volume 3:1 | MAY 1993 | | p.7 |
| K1111-12 | | | |
| Volume 3:2 | JUL 1993 | | p.12 |

PROCEDURES

| | | | |
|-------------|----------|--|------|
| J1002-03R.1 | | | |
| Volume 3:2 | JUL 1993 | | p.11 |

RECONSIDERATIONS

| | | | |
|-------------|----------|--|------|
| J1002-03R.1 | | | |
| Volume 3:2 | JUL 1993 | | p.11 |
| J1002-03R.2 | | | |
| Volume 3:2 | JUL 1993 | | p.14 |

SPOUSE

| | | | |
|-------------|----------|--|------|
| J1002-03R.2 | | | |
| Volume 3:2 | JUL 1993 | | p.14 |

K1027-32

| | | | |
|------------|----------|--|-----|
| Volume 3:1 | MAY 1993 | | p.9 |
|------------|----------|--|-----|

SUPPORT OR MAINTENANCE PAYMENTS

| | | | |
|------------|----------|--|------|
| K1111-12 | | | |
| Volume 3:2 | JUL 1993 | | p.12 |

TRUSTS

| | | | |
|------------|----------|--|------|
| K1226-12 | | | |
| Volume 3:2 | JUL 1993 | | p.15 |

PART II: DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

AGE

| | | | |
|------------|----------|--|------|
| K0117-06 | | | |
| Volume 3:1 | MAY 1993 | | p.10 |

APPLICATIONS

| | | | |
|------------|----------|--|------|
| K0513-08 | | | |
| Volume 3:1 | MAY 1993 | | p.13 |

BANKRUPTCY

| | | | |
|------------|----------|--|------|
| K0530-15 | | | |
| Volume 3:1 | MAY 1993 | | p.12 |
| K1120-14 | | | |
| Volume 3:1 | MAY 1993 | | p.11 |

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

| | | | |
|------------|----------|--|------|
| K0117-06 | | | |
| Volume 3:1 | MAY 1993 | | p.10 |

CASUAL GIFTS OR PAYMENTS

| | | | |
|------------|----------|--|------|
| L0427-13 | | | |
| Volume 3:2 | JUL 1993 | | p.22 |

CO-RESIDENCE

| | | | |
|------------|----------|--|------|
| K0306-10 | | | |
| Volume 3:2 | JUL 1993 | | p.16 |

DISCRETION

| | | | |
|------------|----------|--|------|
| L0403-11 | | | |
| Volume 3:2 | JUL 1993 | | p.20 |
| L0416-04 | | | |
| Volume 3:2 | JUL 1993 | | p.17 |

SUMMARIES OF DECISIONS

CUMULATIVE INDEX

| | | | |
|--------------------------------|----------|--|------|
| L0318-01 | | | |
| Volume 3:2 | JUL 1993 | | p.19 |
| EMPLOYABLE PERSON | | | |
| L0318-01 | | | |
| Volume 3:2 | JUL 1993 | | p.19 |
| EVIDENCE | | | |
| K0117-06 | | | |
| Volume 3:1 | MAY 1993 | | p.10 |
| K0306-10 | | | |
| Volume 3:2 | JUL 1993 | | p.16 |
| EXTENSION OF TIME | | | |
| K0105-04 | | | |
| Volume 3:1 | MAY 1993 | | p.12 |
| K0530-15 | | | |
| Volume 3:1 | MAY 1993 | | p.12 |
| K1120-14 | | | |
| Volume 3:1 | MAY 1993 | | p.11 |
| FAILURE TO PROVIDE INFORMATION | | | |
| L0416-04 | | | |
| Volume 3:2 | JUL 1993 | | p.17 |
| FAIRNESS | | | |
| L0403-11 | | | |
| Volume 3:2 | JUL 1993 | | p.20 |
| INCOME | | | |
| K0326-25 | | | |
| Volume 3:1 | MAY 1993 | | p.15 |
| L1029-44 | | | |
| Volume 3:2 | JUL 1993 | | p.18 |
| JOB SEARCH | | | |
| L0318-01 | | | |
| Volume 3:2 | JUL 1993 | | p.19 |
| JOINT CUSTODY | | | |
| K0513-08 | | | |
| Volume 3:1 | MAY 1993 | | p.13 |
| JURISDICTIONAL ISSUES | | | |
| K0117-06 | | | |
| Volume 3:1 | MAY 1993 | | p.10 |
| LIQUID ASSETS | | | |
| L0403-11 | | | |
| Volume 3:2 | JUL 1993 | | p.20 |

VOL. 3:2 JULY 1993

| | | | |
|--------------------------------------|----------|--|------|
| ONUS | | | |
| K1224-03 | | | |
| Volume 3:2 | JUL 1993 | | p.20 |
| L0416-04 | | | |
| Volume 3:2 | JUL 1993 | | p.17 |
| OVERPAYMENTS | | | |
| K0306-10 | | | |
| Volume 3:2 | JUL 1993 | | p.16 |
| K1120-14 | | | |
| Volume 3:1 | MAY 1993 | | p.11 |
| PAYMENTS RECEIVED | | | |
| K0326-25 | | | |
| Volume 3:1 | MAY 1993 | | p.15 |
| PREGNANCY ALLOWANCE | | | |
| K0513-08 | | | |
| Volume 3:1 | MAY 1993 | | p.13 |
| PRINCIPAL RESIDENCE | | | |
| L0403-11 | | | |
| Volume 3:2 | JUL 1993 | | p.20 |
| PROCEDURES | | | |
| K0117-06 | | | |
| Volume 3:1 | MAY 1993 | | p.10 |
| REFUGEES | | | |
| L0416-04 | | | |
| Volume 3:2 | JUL 1993 | | p.17 |
| RENTALS | | | |
| K0326-25 | | | |
| Volume 3:1 | MAY 1993 | | p.15 |
| S.T.E.P. | | | |
| K0513-08 | | | |
| Volume 3:1 | MAY 1993 | | p.13 |
| L1029-44 | | | |
| Volume 3:2 | JUL 1993 | | p.18 |
| STUDENTS | | | |
| K1117-09 | | | |
| Volume 3:1 | MAY 1993 | | p.16 |
| WAGES, SALARIES, AND CASUAL EARNINGS | | | |
| L0427-13 | | | |
| Volume 3:2 | JUL 1993 | | p.22 |

CUMULATIVE INDEX

PART III: DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

CREDIBILITY

L0525-16
Volume 3:1 MAY 1993 p.17

EXTENSION OF TIME

H0906-09R
Volume 3:1 MAY 1993 p.18

FAMILY BENEFITS

H0906-09R
Volume 3:1 MAY 1993 p.18

RECONSIDERATIONS

H0906-09R
Volume 3:1 MAY 1993 p.18

REFERENCES TO STATUTES AND REGULATIONS

Bankruptcy Act

s.69(1)
K1120-14
Volume 3:1 MAY 1993 p.11

s.124(1)
K1120-14
Volume 3:1 MAY 1993 p.11

Children's Law Reform Act

J1002-03R.2
Volume 3:2 JUL 1993 p.14

Divorce Act, 1985

s.2(1)(b)
K1111-12
Volume 3:2 JUL 1993 p.12

Family Benefits Act

s.1(f)
L0629-19
Volume 3:2 JUL 1993 p.7
s.7(1)
K0715-32
Volume 3:1 MAY 1993 p.7
s.7(1)(f)
K0820-01
Volume 3:1 MAY 1993 p.6
s.13(6)
H0906-09R
Volume 3:1 MAY 1993 p.18
s.14(4)
J1002-03R.1
Volume 3:2 JUL 1993 p.11

Family Law Act

s.30
J1002-03R.2
Volume 3:2 JUL 1993 p.14
s.31(1)
J1002-03R.2
Volume 3:2 JUL 1993 p.14
s.33(9)(a)
J1002-03R.2
Volume 3:2 JUL 1993 p.14
s.33(9)(m)
J1002-03R.2
Volume 3:2 JUL 1993 p.14

General Welfare Assistance Act

s.4(2)
K0513-08
Volume 3:1 MAY 1993 p.13
s.10(2)(b)
L0416-04
Volume 3:2 JUL 1993 p.17
s.10(3)
K0513-08
Volume 3:1 MAY 1993 p.13
s.11(2)
K0105-04
Volume 3:1 MAY 1993 p.12
s.11(3)
K0530-15
Volume 3:1 MAY 1993 p.12
s.12

SUMMARIES OF DECISIONS

| | | | |
|--|---------------------------|----------|------|
| | K1120-14 Volume 3:1 | MAY 1993 | p.11 |
| <u>Interpretation Act</u> | | | |
| s.4 | L0524-26 Volume 3:2 | JUL 1993 | p.6 |
| <u>Ministry of Community and Social Services Act</u> | | | |
| s.12(1) | J1002-03R.1 Volume 3:2 | JUL 1993 | p.11 |
| <u>Ontario Regulation 318, R.R.O. 1980</u> | | | |
| s.1(1)(a) | L0229-07 Volume 3:2 | JUL 1993 | p.9 |
| s.2(5) | K0715-32 Volume 3:1 | MAY 1993 | p.7 |
| s.2(7) | L0524-26 Volume 3:2 | JUL 1993 | p.6 |
| s.5(b) | K1027-32 Volume 3:1 | MAY 1993 | p.9 |
| s.8 | K0820-01 Volume 3:1 | MAY 1993 | p.6 |
| | L0229-07 Volume 3:2 | JUL 1993 | p.27 |
| s.13(1) | K0715-32 Volume 3:1 | MAY 1993 | p.7 |
| s.13(2)1 | J0313-15R Volume 3:1 | MAY 1993 | p.8 |
| s.13(2)7 | J0313-15R Volume 3:1 | MAY 1993 | p.8 |
| | K0715-32 Volume 3:1 | MAY 1993 | p.7 |
| s.14(3) | L0420-16 Volume 3:1 | MAY 1993 | p.4 |
| s.38(1) | L0722-21 Volume 3:2 | JUL 1993 | p.5 |

| | | | |
|--|------------------------|----------|------|
| s.38(2) | L0722-21 Volume 3:2 | JUL 1993 | p.5 |
| <u>Ontario Regulation 441, R.R.O. 1980</u> | | | |
| s.1(1)(k) | L0403-11 Volume 3:2 | JUL 1993 | p.20 |
| s.1(1)(n)(ii) | K0117-06 Volume 3:1 | MAY 1993 | p.10 |
| s.3(1b) | K1117-09 Volume 3:1 | MAY 1993 | p.16 |
| | L0318-01 Volume 3:2 | JUL 1993 | p.19 |
| s.3(1b)(i) | L0318-01 Volume 3:1 | JUL 1993 | p.19 |
| s.3(3)(a) | L0318-01 Volume 3:2 | JUL 1993 | p.19 |
| s.3(3)(b) | L0602-17 Volume 3:1 | MAY 1993 | p.5 |
| s.6(1)(c) | K1117-09 Volume 3:1 | MAY 1993 | p.16 |
| s.12(2)7 | K0513-08 Volume 3:1 | MAY 1993 | p.13 |
| s.13(1)(a) and (b) | K0326-25 Volume 3:1 | MAY 1993 | p.15 |
| s.13(2)1 | K0513-08 Volume 3:1 | MAY 1993 | p.13 |
| s.13(2)13 | K0326-25 Volume 3:1 | MAY 1993 | p.15 |
| s.31(2)22 | L0427-13 Volume 3:2 | JUL 1993 | p.22 |
| <u>Ontario Regulation 537, R.R.O. 1990</u> | | | |
| s.15(2) | L1029-44 Volume 3:2 | JUL 1993 | p.18 |

CUMULATIVE INDEX

Statutory Powers and Procedure Act

s.5

J1002-03R.1
Volume 3:2 JUL 1993 p.11

Vocational Rehabilitation Services Act

s.9(b)

L0525-16
Volume 3:1 MAY 1993 p.17

s.9(c)

L0525-16
Volume 3:1 MAY 1993 p.17

REFERENCES TO MANUALS

Family Benefits Policy and Procedural Guidelines Manual

Policy 0203-02
K0513-08
Volume 3:1 MAY 1993 p.13

Policy 0503-03
K1120-14
Volume 3:1 MAY 1993 p.11

General Welfare Policy Guidelines

GW 0304-03
K0513-08
Volume 3:1 MAY 1993 p.13

DEFINITIONS

"dependent for support and maintenance"

K0513-08
Volume 3:1 MAY 1993 p.13

"earnings"

L0427-13
Volume 3:2 JUL 1993 p.22

"living with"

J1002-03R.2
Volume 3:2 JUL 1993 p.14
K0117-06
Volume 3:1 MAY 1993 p.10
K0513-08
Volume 3:1 MAY 1993 p.13

"on behalf of"

K0715-32
Volume 3:1 MAY 1993 p.7

"residence"

K0715-32
Volume 3:1 MAY 1993 p.7

"spouse"

J1002-03R.2
Volume 3:2 JUL 1993 p.14

"support"

K1111-12
Volume 3:2 JUL 1993 p.12

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Volume 3, Number 3

November 1993



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ORGANIZATION

This publication is divided into three parts. Part I contains summaries of decisions that relate to the Family Benefits Act. Part II contains summaries of decisions relating to the General Welfare Assistance Act, and Part III contains summaries of decisions relating to the Vocational Rehabilitation Services Act.

Each decision summarized in this publication is assigned a number of different index terms which reflect its content. The summaries appear under the one heading which best expresses the most noteworthy issue under discussion in each decision. This heading is in **BOLD** type at the beginning of each summary. These headings are arranged in alphabetical order within Part I, Part II, and Part III.

Other index terms which apply to a decision are listed separately to provide a further indicator of content.

Example:

CATEGORICAL ELIGIBILITY

OTHER INDEX TERMS: JOINT CUSTODY; RECONSIDERATIONS;
SINGLE PARENT WITH DEPENDENT CHILDREN

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Each decision is identified by an alphanumeric File Number which appears on the summary in **BOLD** type. This number should be used to identify SARB decisions or to order copies. All decisions from Hearings on Reconsideration have the letter R added to the end.

Example:

File Number: F0927-16R

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THE SUMMARIES

Each summary is a brief statement of the most important facts of the decision and of the findings of the Board. It is not a guide to the arguments presented by the parties or to the Board's reasoning and analysis. For full insight into these matters readers must consult the full text of the decision. Instructions for obtaining copies of decisions appear on the last page of this publication.

The disposition of the case, the number of pages in the full-text version of the decision, and the language in which the decision was written appear as the last sentence in the summary. Certain decisions have both an English and French language version available.

Example:

Appeal denied. (16 pp English; or 18 pp French)

REFERENCES

These references are to documents and authorities considered in and commented on in some detail by the Board in its findings. They are further indicators of the relevance of the decision. The list may include, in this order: federal and provincial statutes, regulations, cases, books, treatises, and manuals. Terms whose meanings are discussed in a significant way appear in quotation marks at the end of the list.

Example:

General Welfare Assistance Act s.7(1); Re Richardson and the Commissioner of Metropolitan Toronto Department of Social Services (1988), 46 O.R. (2d) 63; "reside"

CUMULATIVE INDEX

A cumulative index to this publication is included with each issue. Use it to find summaries of decisions on specific subjects of interest to you.

References to summaries in the current issue are integrated with references from preceding issues in this list. Therefore, the most recent index can also be used to find decisions summarized in previous issues. KEEP YOUR BACK ISSUES FOR FUTURE REFERENCE. At the beginning of each volume we will begin a new index.

The cumulative index is divided into the same three parts as the rest of the publication. Part I of the index refers to the Family Benefits Act. Part II refers to the General Welfare Assistance Act, and Part III to the Vocational Rehabilitation Services Act.

The index is arranged in alphabetical order by subject within each of the Parts. Each decision appears under several different index terms to provide a detailed guide to its content. Note that headings are of many different types. Factual, procedural, and conceptual terms are used and the names of statutes or programs may also appear as index terms.

Example:

| | |
|--|--------------|
| DRUG BENEFIT | (factual) |
| EXTENSION OF TIME | (procedural) |
| ONUS | (conceptual) |
| <u>CANADIAN CHARTER OF RIGHTS AND FREEDOMS</u> | (statute) |
| S.T.E.P. | (program) |

HOW TO USE THIS PUBLICATION

The index terms are upper case. The line below shows the File Numbers of all of the decisions which contain information on these subjects.

Example:

EXTENSION OF TIME

H0321-05

Volume 2:3 OCT 1992 p.5

Information under the File Number shows where that particular summary originally appeared in our publication. The issue number and date and the page number are provided. ■

DECISIONS UNDER THE FAMILY BENEFITS ACT

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

Other Index Terms: PUTATIVE FATHER;
SUPPORT OR MAINTENANCE
PAYMENTS

Date of Hearing: August 26, 1992

The Director determined that the Appellant was not making reasonable efforts to obtain support and therefore assessed a charge of \$75 monthly against her allowance, to continue until documentation showing her efforts to seek support was received.

Based on the evidence received at the hearing,

NOVEMBER 1993

The Director's submission indicated that it was a firmly held contention that A. was the father of the child. The Appellant explained that A. was an abusive man who had harassed and assaulted both herself and her children on several occasions. Nevertheless, it had been very difficult for her to leave the relationship with him. She had stayed in the relationship hoping he would marry her so that she would no longer need an allowance. She had always thought that his behaviour would improve. Moreover, she found it embarrassing and humiliating to disclose this information. After a great deal of professional counselling, she had decided that not pursuing support from A. would protect herself and her children.

The Appellant's counsel presented as evidence two photographs of the Appellant taken by the police. These photos showed multiple and severe bruises. The Board accepted these photos as evidence supporting the Appellant's testimony.

A memorandum from the Director stated that when the application of a section 8 charge is deemed to be appropriate, based on internal policy criteria, the amount of the charge will be \$75 per child per month because that is the amount of support that would be reasonable for the father to pay. However, in this case there was no evidence before the Board with regard to A.'s financial situation or his ability to pay.

The legislation requires that the Recipient make reasonable efforts to pursue support. In the opinion of the Board, had the information that was brought forward at the hearing been available to the Director at the time of his decision, the Director would probably have found that pursuing support was not reasonable in this case. The Board ordered

FAMILY BENEFITS ACT

that there be no further deductions from the Appellant's allowance and that any amounts previous deducted be reimbursed. **Appeal granted. Decision of the Director rescinded.** (11 pp; English)

References: O.Reg. 318 s.8; *Clifton and Director of Income Maintenance Branch* (1985), 53 O.R.(2d) 33; *Campbell and the Director of Income Maintenance Branch* (1990), 71 D.L.R.(4th) 765 ■

CO-RESIDENCE

File Number: L0304-14

Date of Hearing: October 6, 1992

The Appellant was a sole support parent who lived in a rented townhouse. She shared the cost of the rent and utilities with two students who lived in two rooms in the basement. She did not divide the cost equally with the students because she and her child occupied a larger part of the house. The students lived independent lives and shared nothing other than rent and utilities.

The Director reduced the amount of the Appellant's allowance by a co-residency charge determined in accordance with subsection 41(1) of Regulation 318. The Appellant requested a hearing because she felt that she was being penalized for sharing her costs and that it was unfair for the Director to automatically assume that her roomers shared the rent equally with her.

Was the deduction properly assessed? The critical issue was whether the Appellant "shared accommodation" with the students. The term "accommodation" appears only in section 41; therefore, the use of this different term must be carefully considered. In the Board's view, there are two possible interpretations of the phrase. The first is to treat "accommodation" as synonymous with

"shelter". If two people live in the same premises and their relationship cannot be characterized as that of landlord/tenant, landlord/roomer, or landlord/boarder, then they share accommodation. The second approach is to interpret "accommodation" as broader than shelter, in which case two adults would share accommodation only if they had established a household and only if they shared household responsibilities and expenses in addition to rent and utilities.

In this case, the Director adopted the first approach. However, in the Board's view, this interpretation is inconsistent with other legislative provisions and leads to illogical results, whereas the second approach is more consistent with the general legislative scheme and more understandable in terms of public policy. "Accommodation", in the opinion of the Board, can be used both as a synonym for shelter and to include additional things such as food and services. Moreover, while the term "share" can mean equal sharing, it is not restricted to situations where shares are equal. "Share" may also imply that one of the parties had original control and extends a share to the other party.

A careful reading of section 41 reveals that it is a reduction from budgetary requirements. The calculation of budgetary requirements, in the opinion of the Board, clearly recognizes that shelter costs increase with the number of family members, whether they are adults or children; it is designed to pay recipients their actual shelter costs up to a specified maximum. However, the co-residence reduction is based on an equal sharing of shelter costs by adults without considering the number of children. Because the Appellant had one child, she was eligible for up to \$625 in rent and utilities. She actually paid \$550 for these and therefore would have been entitled to receive \$550 per month for shelter if she had not been living under the same roof

as the two students. Because she shared with them, her entitlement was reduced by \$291 per month. The consequence of the Director's interpretation of section 41 is that recipients who share accommodation with other adults would never have their actual shelter costs met, no matter how low the rent.

The Board concluded that section 41 is based on the assumption that "shared accommodation" should be interpreted as including more than shelter. Two adults therefore share accommodation only if they have established a household which involves sharing responsibilities and expenses over and above rent. In the opinion of the Board, this interpretation is consistent with the manner in which allowances are calculated. Furthermore, the Board believes that this interpretation is supported by the legislative history of the provision and is consistent with public policy. The Director should not have applied the co-resident reduction to the Appellant's allowance. **Appeal granted. Decision of the Director rescinded.** (9 pp; English)

REFERENCES: O.Reg. 318 s.41(1); "shared accommodation" ■

CREDIBILITY

Other Index Terms: ASSETS; FRAUD; INCOME

File Number: L1231-08

Date of Hearing: June 10, 1993

At the time of her application for an allowance and of her first Client Information Update, the Appellant reported no income and very limited assets. As a result of information received from the police, the Director learned of a bank account in the Appellant's name. This account held balances of between \$8,000 and \$20,000 during the time that the

Appellant was receiving her allowance.

Further investigation revealed that the Appellant also owned two automobiles at different times during her period of entitlement. The first was purchased with funds from the bank account in question; the second car was purchased with funds from the bank account plus a loan from the bank and the trade-in of the first car. Neither of these cars had been reported as assets.

An investigation of the financing for the second car revealed that the Appellant had submitted an employment letter to qualify as a co-signer for the loan, which had been taken out by her brother-in-law. This letter indicated that she had been working for a company owned by this same relative for ten years. She testified that the letter was fraudulent and had been presented to the bank only to enable her to get the loan.

The Appellant admitted that the bank account was in her name but stated that the funds belonged to her brother-in-law. She explained that the bank personnel had advised her that, since the car was in her name, it would be easier to arrange for payments if the bank account from which they were drawn was in the same name. When questioned why the account consistently held large amounts of money, the Appellant stated that the brother-in-law used it to deposit funds from his business. To support this she submitted a "past due notice" for a car payment and a receipt for a car payment, both in the name of the brother-in-law.

She admitted to the cars being in her name but stated that the cars had been purchased for her niece, the brother-in-law's daughter. The niece testified that although it was in the Appellant's name, the second car had been bought for her but that she was not insured to drive it. The Appellant's brother-in-law drove

FAMILY BENEFITS ACT

it most often. When asked why he did not put it in his own name the Appellant explained that he already owned a car in his name. She also submitted a statutory declaration swearing that she held the car in trust for her brother-in-law.

The Board found that many of the Appellant's explanations failed to meet the standard of reasonableness, and that her niece's oral testimony did little to strengthen the Appellant's testimony. Moreover, the Board gave little weight to the documentary evidence submitted by the Appellant. The statutory declaration merely reiterated the Appellant's oral evidence and the past due notice and receipt did not prove the money in the bank belonged to anyone other than the Appellant. Finally, it did not seem reasonable to the Board that a bank account containing many thousands of dollars would have been set up merely to make car payments. **Appeal denied. Decision of the Director affirmed.** (6 pp; English)

REFERENCES: none ■

DEPENDENT CHILD

File Number: L0212-01

Date of Hearing: March 30, 1993

The Appellant was a single parent with one dependent child. Her child was often ill and was, with the mother's consent, removed from her care. The child was cared for by the Children's Aid for a period of six months. After a home visit, the Director terminated her allowance. The Director's position was that the child was not financially dependent on his mother while he was in the care of the Children's Aid and that the Appellant was categorically ineligible without the child.

The Appellant testified that she visited her son frequently and brought him toys, clothes,

food, and vitamins when he was in the care of the Children's Aid. She estimated that she had spent \$300 on these items.

There were two questions before the Board. First, was the Appellant's son a dependent child according to the definition in the legislation? The criterion under discussion was whether the child was "supported by" his mother. The Appellant's representative argued that the child had been supported by his mother financially, psychologically, and medically and that her visits were important aspects of his care.

The Board noted that other decisions on this question have pointed out forms of support that are not simply financial in nature and that the legislation does not stipulate the degree of support required in order to establish that the child was dependent. The Board found that the Appellant's child was supported by her because she maintained a home for him to return to, and because she regularly provided him with food, clothing, and toys.

The second question before the Board was whether the Appellant was a mother "with" a dependent child during the period in question. The Board noted that section 7(1)(d) of the *Family Benefits Act* does not state that the dependent child must live with the parent.

Policy 0404-05 provides guidance in interpreting these questions. In the Board's opinion, this policy recognizes that families require support in times of crisis in order to remain intact and that a parent can be "with" a dependent child even though that child resides outside the home. However, the policy requirement that the parent make payments according to a court order or an agreement with the agency that provides the care should not be the only form of support that creates eligibility. The Board concluded that the Appellant was a mother "with" a dependent

child, as required by the legislation. **Appeal granted. Decision of the Director rescinded.** (14 pp; English)

REFERENCES: *Family Benefits Act* s.1(f), s.7(1)(d); *Family Benefits Policy and Procedural Guidelines*, Policy 0404-05; "supported by" ■

FAILURE TO PROVIDE INFORMATION

Other Index Terms: CREDIBILITY;
LIQUID ASSETS

File Number: L1222-28

Date of Hearing: June 30, 1993

The Appellant was granted an allowance as a single parent with two dependent children. On her Client Update form she declared that she did not know the whereabouts of her former spouse and that she had no assets. The Appellant was later the subject of an intensive investigation, which revealed a number of matters affecting her eligibility.

First, Ministry of Transportation documents revealed that the Appellant owned an automobile and was a licensed driver. In response to this information, the Appellant stated that the car was bought by relatives during their visit to Canada. When they returned to their home country they were unable to take the car with them and asked the Appellant to use it. It was her firm belief that she did not really own the car as she had never paid for it. She presented the Board with a letter from her relatives authorizing the Appellant to use the car.

The Board found that the car was bought in the Appellant's name and was also registered in her name. In the absence of other evidence about the purchase of the car, the Board concluded that the Appellant was the legal

owner. However, the legislation permits the Appellant to own a car and as she had two children, there was a need for it. It was not therefore a liquid asset. The Appellant, however, did fail to disclose the vehicle.

Further investigation revealed that the Appellant was the owner of a fashion business. There was no telephone listing for it and no business registration. Income tax returns did not indicate any income from business. However, two sewing machines, irons, ironing boards, fabrics, and a book of clients' names were found in the home. When some clients were contacted they said that the Appellant made dresses for them. However, they refused to make statutory declarations affirming that fact.

The Appellant stated that she made clothes for schools and cultural celebrations on a voluntary basis. Some of these were also sold by her friends and the money used for charitable purposes. She denied having two sewing machines in her home and stated that the piles of fabric in her bedroom were her laundry. However, a witness for the Appellant stated that there were two machines in the apartment and that one of them belonged to him.

The Board found that there was no substantive evidence to show that the Appellant owned a business. However, much conflicting evidence was presented to the Board which resulted in the Appellant's credibility being questioned. The Board found that she failed to provide true information about the sewing machine and also failed to disclose several costly trips to her homeland over a two-year period. On the balance of probabilities, the Board concluded that the Appellant did operate a business. However, the income from it could not be assessed and the Board found that the Appellant failed to provide the information required to assess

FAMILY BENEFITS ACT

eligibility.

A title search on a residential property revealed that the Appellant's former spouse was an owner and that the Appellant had signed the deed as his spouse. Her name was not on the mortgage application. However, the property was rented and the rent collected by the Appellant. The rent was deposited into a bank account in her name and the mortgage was paid from this account. This bank account also had not been disclosed. The Appellant stated that she had merely offered to help her spouse as he was having problems collecting the rent. The Board thought it unusual that she would offer to help a person from whom she had been separated for many months. Moreover, the Board could not understand why she deposited money into her undisclosed bank account instead of simply giving it to her spouse who issued the receipts. The Board found that the Appellant had clearly failed to disclose information about the property, her involvement in it, the rental money, and the bank account. Moreover, since the legislation clearly states that any regular payments received under a mortgage are considered to be income, the Board concluded that the Appellant was receiving income from the property. **Appeal denied. Decision of the Director affirmed.** (6 pp; English)

REFERENCES: none ■

FAILURE TO PROVIDE INFORMATION

Other Index Terms: AVAILABLE
FINANCIAL RESOURCE; FAIRNESS;
PUTATIVE FATHER

File Number: J0510-09

Date of Hearing: January 26, 1993

A preliminary issue in this appeal was whether the Appellant, who was deceased at

the time of the hearing, had the right to have her appeal proceed and to have her estate benefit from the appeal if it were decided in her favour.

A., the Appellant's common-law spouse, was the administrator of the estate. He was also considered to be trustee and beneficiary of the estate, had interim custody of her children and was seeking permanent custody. However, he did not have legal documentation formalizing this role in relation to the estate. Although these documents would have been of assistance, the Board noted that it had not found them to be essential in past cases, especially when weighed against the unfairness of failing to proceed and render a decision in this matter. The Appellant had persistently demonstrated her desire to pursue the appeal and the Board concluded that requiring strict compliance with expensive formal procedures might be an unnecessary barrier to people of limited financial means.

The Board accepted that there might be some prejudice to the Director's case since the Appellant could not be cross-examined. The Board reasoned that the Appellant's case was also prejudiced in that it could not benefit from her direct testimony. Finally, in deciding to proceed to hear the appeal, the Board noted that the Director did not argue against proceeding.

The Appellant's allowance as a sole-support parent was suspended on two grounds: failure to provide information necessary to determine eligibility and failure to make reasonable efforts to pursue support.

The Director and Appellant differed as to what information was required to establish eligibility and what was the appropriate way to seek this information. The question was whether A., who was the Appellant's co-resident at the time, was the biological father

of the Appellant's daughter. The Board agreed with the Director that this question was relevant to establishing continuing eligibility.

The Appellant had disclosed on her annual Client Information Update that she was pregnant and that she thought the biological father was A. However, the Appellant became much less certain of this as time passed, particularly after an ultrasound test changed her mind about the time of conception and caused her to think that there were other possible fathers.

The Director was of the opinion that the Appellant had changed her mind after she discovered that she would no longer receive an allowance if A. were proved to be the father of her child. The Director therefore asked her to either declare that A. was the father, or to seek a court order to have A. take a blood test to clarify paternity. Her failure to do so resulted in the cancellation of benefits.

In the Board's view, it was not appropriate or reasonable to require a court order for blood tests to establish paternity. The Appellant's representative argued that the Appellant's original declaration that A. was the child's father was not a sworn paternity declaration. The declaration was, at best, merely the Appellant's belief at the time. The Board found this argument persuasive. Furthermore, A., the Appellant's witness, provided evidence supporting the Appellant's account of her reasons for changing her mind about the identity of the child's father. Although the Board noted that this witness might be biased because he was the beneficiary of the Appellant's estate, the Board found his evidence credible.

Finally, according to letters from the Appellant's lawyer, the Appellant appeared to be willing to proceed with blood testing if

funding were made available to test all three of the potential fathers. The Board concluded that she had taken all steps to comply that were possible in the circumstances.

Was the information which was requested within the control of the Appellant? On the evidence, the Board was not prepared to believe that the Appellant knew who the father of her child was. The Appellant maintained that because she was unsure, she could not make a declaration of paternity. She did not have enough money to pay for the extra blood tests and, acting on her lawyer's advice, refused to have A. alone tested. She could therefore not provide the required information without going against her lawyer's advice. The Board concluded that the Appellant had showed a willingness to provide information to the best of her ability.

Had the Appellant failed to pursue support for her child? The evidence indicated that the Appellant had been prepared to go to court to seek support should the child's father be identified. The Board concluded that, without blood test evidence or a declaration accepted by the child's father, there was no legal obligation for anyone to support her child. Therefore, she could not take steps to obtain support from any of the possible fathers. The Board concluded that she was not ineligible because of a failure to pursue support.

Finally, although the Appellant began to seek an amount for supporting her daughter in her allowance, there was no increase until she, with her lawyer's assistance, made a written commitment to pursue support. The Director deemed that the sum of \$117 was income that could have been received by the Appellant had she pursued support and deducted it from her allowance. The Appellant's representative questioned how the Director could deem income as potentially available when paternity had not been established. The Director's

FAMILY BENEFITS ACT

spokesperson and the written submission did not take a position on the issue of the deemed income. The Board found the arguments of the Appellant's representative persuasive and concluded that the \$117 should not have been deducted. **Appeal granted. Decision of the Director rescinded.** (15 pp; English)

REFERENCES: *Family Benefits Act* s.12(a) and (b) ■

LIQUID ASSETS

Other Index Terms: INSURANCE

File Number: L0211-20

Date of Hearing: July 13, 1993

Because of a motorcycle accident, the Appellant was blind and severely head injured. At the time of his application he resided with his mother in a board and lodging arrangement. There was no fixed rate for the board and his mother took responsibility for his total care. Later, he received a lump-sum settlement from the insurance company in the amount of \$50,000 for lost wages and medical expenses. No portion of this money was compensation for pain and suffering. After paying his legal fees, \$47,000 remained.

An agreement was prepared between the Appellant and his mother whereby the proceeds of the settlement were paid to the mother, in consideration for the care and financial support that she had provided since the accident and that she would continue to provide in future.

The mother spent this money as follows. She repaid a loan that had been used to purchase a vehicle to take her son to his many medical appointments. She also repaid a loan for the purchase of a primary residence for the

Appellant, herself, and her other brain injured son. She made repairs to the home and paid taxes on it.

Based on this information, the Director determined that the Appellant had decided to transfer the liquid assets to his mother and did not receive adequate consideration for them. In the Director's view the transfer was inadequate because the mother used the funds to pay off her personal loans and to repair her residence, and paying the mother's loans was not the purpose of the settlement.

At the hearing, the Appellant's mother testified that she had purchased the home because she knew that her son's care would rest solely upon her shoulders for many years. It was a house that the Appellant had previously lived in and was familiar with. Similarly, she testified that she required reliable transportation for herself and the Appellant. These disbursements were made with the Appellant's present and future needs in mind.

The Board was of the opinion that the Director would have accepted the disbursement as adequate and reasonable had the Appellant himself used the funds to purchase a home, repair the home and purchase an automobile. Because the purchased property and goods were not in the Appellant's name, the Director deemed the disbursement to be inadequate. In the Board's view, while it is true that the mother benefited from the way in which the money was spent, the Appellant derived a benefit from these expenditures as well. Moreover, the Board found the Appellant's mother's devotion to her son to be clear, unwavering, and beneficial to him. It would have been preferable for the mother to discuss the disbursement of the insurance settlement with the Director prior to spending the money but this did not happen, partly because she had

acted on the advice of the lawyer who had negotiated the settlement for them and she assumed that this was adequate. The Board concluded that the transfer of funds was done for the purchase of items necessary for the Appellant's health and well-being and that they were purchased at fair market value. **Appeal granted. Decision of the Director rescinded.** (9 pp; English)

REFERENCES: O.Reg. 318, s.1(1)(a)(i), s.7(1) ■

PAYMENTS RECEIVED

Other Index Terms: INCOME

File Number: L0103-02

Date of Hearing: September 11, 1992

When the Appellant applied for an allowance, she declared a monthly income of \$1,390 and the Director determined her budgetary entitlement to be \$1,351 per month. However, during the application interview the Appellant explained to the caseworker that her dependants were attending private school at a cost of \$8,500 per year. Averaging this \$8,500 over the ten-month school year increased her income to \$1,750 per month. The Director deemed her ineligible because her income exceeded her budgetary requirements.

The Appellant testified that the private school was her former spouse's idea. He did not have the money to pay for the tuition so the children's grandparents paid it through their company. The tuition was paid in a lump sum to the school. She further testified that she had no access to any of the tuition money. Moreover, she did not have a good relationship with her husband's family and had no control over the decision to send them to private schools. The Director submitted that

the payments for tuition fees were payments received on behalf of the dependants of the applicant, and that they were payments for support or maintenance made under a domestic contract.

The Appellant's legal representative argued that, technically speaking, the payments to the school were not part of a domestic contract. The domestic agreement in question referred to school attendance as an issue of custody and access rather than as an issue of support or maintenance. Moreover, this provision in the agreement did not provide the Appellant with an enforceable right. The Appellant could not force either her ex-spouse or his parents to pay the fees on her demand; rather, the agreement merely required that she transport them to school. It was noted that those who negotiate divorce agreements seldom anticipate applying for social assistance when formulating the text of their agreements.

The Board agreed with this argument. The Appellant had no control over the decision to send the children to private school, nor had she control over the tuition funds. The Board also noted that the Appellant was not able to claim the tuition fees as income for income tax purposes. Furthermore, in the Board's view, one might consider that the tuition fees were paid on behalf of the children's father by his parents, or that they were paid on behalf of the children by the grandparents. The Board concluded that neither the Appellant nor her dependants received income for themselves or on their behalf. **Appeal granted. Decision of the Director rescinded.** (9 pp; English)

REFERENCES: *Interpretation Act* s.4; O.Reg. 318 s.13(1), s.13(2)8 ■

GENERAL WELFARE ASSISTANCE ACT

PART II

DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

ASSIGNMENT

File Number: L1109-06

Date of Hearing: March 16, 1993

The Appellant left her job because of harassment, expecting that she would receive Unemployment Insurance benefits within two weeks. Instead, because she had left her job voluntarily she was disqualified for seven weeks. She appealed this Unemployment Insurance decision and was eventually successful but she did not receive the balance of the money for several months.

Because she was in a dire financial situation, the Appellant asked General Welfare Assistance for emergency assistance. She further stated that she wanted emergency assistance that did not have to be repaid. She was told that emergency assistance was not issued in this manner and that she would be required to fill out an application for general welfare assistance. After a period of deliberation she applied and was asked to sign an assignment of her Unemployment Insurance benefits. She felt that she had no alternative but to sign this form. Later, when the Administrator received the U.I. benefits, the Appellant claimed that she had been coerced into signing the assignment.

The Board found that section 5(1) of Regulation 537 sets out as a condition of eligibility that the applicant sign an

assignment where money is due and owing. Therefore, although the Appellant viewed this requirement as arbitrary and coercive, it is in fact a condition of eligibility and the Administrator was correct in insisting on it. **Appeal denied. Decision of the Administrator affirmed.** (4 pp; English)

REFERENCES: O.Reg. 537 s.5(1) ■

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Other Index Terms: AGE

File Number: G1208-21

Date of Hearing: January 19, 1993

In its preliminary decision the Board determined that the Appellant, a 15 year old person, was not eligible for assistance in her own right.

The first issue remaining before the Board was whether subsections 1(1)(a), 1(1)(n), and 11(1) of Regulation 441, which limit the direct payment of general assistance to eligible persons 16 years of age or older, violate section 15(1) of the *Canadian Charter of Rights and Freedoms*.

It was not disputed that, under the legislation, people under the age of 16 are treated differently than people over the age of 16. Members of the first group are not eligible for assistance in their own right while members of the second group are. The question before the Board was whether this distinction amounted to discrimination within the meaning of section 15(1) of the *Charter*.

The Board found that, in the present case, there had been a distinction based on a personal characteristic of the Appellant, her age. This distinction had the effect of

withholding a benefit to the Appellant (direct payment of assistance), which is available to other members of society. While it is true that the Appellant could have received assistance indirectly as a foster child, the amount of assistance thereby available would be much less than she would receive if eligible in her own right. Moreover, the Administrator had not considered her merits and capabilities but based his decision solely on the basis of her age. Since age is a specific ground of prohibited discrimination in the *Charter*, the Board found that the test of discrimination in section 15 was satisfied in the present case.

The Respondents submitted that even if the Board were to conclude that the previously mentioned subsections of Regulation 441 violated the *Charter*, they could still be upheld as a "reasonable limit" under section 1 of the *Charter*. The onus was on the Respondents to prove that the limitation on the Appellant's section 15 right was "reasonable", "demonstrably justified in a free and democratic society", and thereby not inconsistent with the *Charter*.

The Board found that three of the objectives of the legislation, as advanced by the Respondents, were of sufficient importance to society to override a constitutionally protected right. Were the means of achieving those objectives "reasonable and demonstrably justified"? In the opinion of the Board, the legislation was both rationally connected to the objectives of the legislation and impaired "as little as possible" the Appellant's right to equal benefit of the law without discrimination. Nor was the Board prepared to substitute its opinion on the appropriate age for payment of direct assistance for that contained in the legislation, as the Board found that the age restriction of 16 is not unreasonable.

The Board concluded that the prohibition of

direct payment of assistance to the Appellant was discrimination but that it was justifiable under section 1 of the *Charter*. The application to find certain sections of Regulation 441 of no force and effect failed.

Appeal denied. Decision of the Administrator affirmed. (21 pp; English)

REFERENCES: *Canadian Charter of Rights and Freedoms* s.1, s.15(1); Leading Cases: *Andrews v. Law Society of British Columbia* (1989), 56 D.L.R. (4th) 1 (S.C.C.); *Tetreault-Gadoury v. Canada (Employment and Immigration Commission)*, [1991] 2 S.C.R. 22 (S.C.C.); *R. v. Edwards Books & Art Ltd.* (1986), 35 D.L.R. (4th) 1; *R. v. Oakes* (1986), 26 D.L.R. (4th) 200 (S.C.C.), and other cases■

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Other Index Terms: SINGLE PERSON

File Number: K1013-22

Date of Hearing: December 1, 1992

The Appellant was a 20 year old single employable person who lived at home. In order to qualify for assistance, an individual must be either a "single person" or a "head of a family". The legislation specifically states that an employable person under the age of 21 living with a parent is not a "single person".

The Appellant claimed that because single employable persons over age 21 who live with their parents may qualify for assistance, the definition of "single person" in Regulation 441 discriminated against her solely on the basis of age.

At the hearing the Director conceded that the definition of single person violated section 15(1) of the *Canadian Charter of Rights and Freedoms* and was not saved by section 1 of

GENERAL WELFARE ASSISTANCE ACT

the *Charter*. The Board agreed.

In line with Supreme Court of Canada rulings, the Board's decision stressed that the Board does not have authority to make a general declaration that a provision is of no force and effect for all purposes. Accordingly, the Board concluded that section 1(1)(n)(ii) of Regulation 441 was of no force and effect in the circumstances of this case.

REFERENCES: *Canadian Charter of Rights and Freedoms* s.15(1); O.Reg. 441 s.1(1)(n)(ii); *Cuddy Chicks Ltd. v. Ontario Labour Relations Board* (1991), 81 D.L.R. (4th) 121 (S.C.C.) ■

HEAD OF A FAMILY

Other Index Terms: AVAILABLE
FINANCIAL RESOURCE; STUDENTS

File Number: L0402-36

Date of Hearing: June 15, 1993

The Appellant applied for assistance for herself and her five children. Her husband had been receiving unemployment insurance benefits when he got the opportunity to take an advance course in his subject in a distant city, under the sponsorship of the Ministry of Labour. Her entitlement was calculated according to the husband's income from unemployment insurance and contributions that could have been made to the Appellant and her children. Later, the Appellant was admitted into a training program and began to receive a training wage. The Administrator decided to terminate her assistance but continued to provide Special Assistance for prescription drugs, a bus pass, and a child care subsidy so that the Appellant could pursue her training program.

The Appellant reapplied for assistance because her husband was still attending school

out of town. Her request was denied because of the "voluntary absence of the Appellant's husband". The Board found that the Appellant was the "head of a family", as she had charge of a household and five dependent children. The question before the Board was whether the Appellant's spouse was "absent" within the meaning of the legislation.

Counsel for the Appellant argued that if one considered the plain, literal meaning of the word, the spouse was indeed absent. The Administrator argued that the husband's absence was not the result of a breakdown in the spousal relationship but was a voluntary geographic separation; therefore, the Appellant could not be considered a sole-support parent.

According to the principle of statutory interpretation, words must be given their grammatical and ordinary meaning unless that interpretation would lead to absurdity, repugnance, or inconsistency with the rest of the legislation. In this case, the specific circumstances of the husband's absence must be examined. Although there was little question that his absence was voluntary, the Board was of the view that he did not leave home so that the Appellant could qualify for assistance. Since there is no indication in the legislation that the spouse's absence must involve an element of involuntariness, and previous decisions support acceptance of the plain, ordinary meaning of the term, the Board was reluctant to impose such a test. Finally, in the Board's opinion, concluding that the spouse was "absent" does not lead to absurdity, repugnance or inconsistency.

A remaining consideration was the amount of the Appellant's entitlement. Although she was a person in need, she must still make reasonable efforts to realize any financial resource from her spouse. The legislation clearly states that income includes payments

received by the spouse of the applicant, where the spouse lives with the applicant. In this case, the Board found that the Appellant and her spouse lived separately, not because they did not wish to live together, but because of their particular circumstances. The net income available to the Appellant's husband was the difference between his income from unemployment insurance benefits and his expenses.

Counsel for the Appellant challenged the amount deemed available from the husband on the grounds that, although he recognized an obligation to support his family, he was unable to contribute because of his expenses living in another city. She argued that, in determining the husband's support obligation, the Board should consider his own expenses. However, in the Board's view, support obligations are not a primary consideration in this case as there was no marital breakdown. The Board concluded that the Appellant was eligible for assistance subject to the income deemed to be available to her; further, her income from the training program must also be considered in determining her entitlement. **Appeal granted. Decision of the Administrator rescinded.** (8 pp; English)

REFERENCES: O.Reg. 441 s.1(4); *Denhardt v. Director, Income Maintenance Branch*, Div. Ct., December 15, 1989 (unreported); "absent" ■

ONTARIO MOTORIST PROTECTION PLAN

Other Index Terms: DAMAGES OR COMPENSATION FOR PAIN AND SUFFERING; PAYMENTS RECEIVED

File Number: M0217-20

Date of Hearing: July 7, 1993

After the Appellant was injured in a motor

vehicle accident, an insurance company made payments to him. These payments were \$185 per week in disability benefits and \$100 per week in child care allowances. The child care allowances were paid to the Appellant directly. However, the remaining gross payments were received in trust and administered through a law firm.

After processing fees, delivery costs, and taxes were applied, the net amounts were paid regularly to the Appellant. Part of this money was used to pay the cost of physical rehabilitation for the Appellant and part was used for the family's living costs, which arose because the Appellant had to pay others to do chores that he could no longer do himself. For some time the Appellant was not aware that he was obliged to report these payments to his caseworker.

When he revealed this to his worker, the amount of his entitlement was substantially reduced. The Administrator took the position that the insurance payments were "income", whereas the Appellant's position was that they were used to pay expenses incurred because of his injury, and for pain and suffering. The Appellant further claimed that if these payments were income they should not have been deducted because he did not know that they were deductible.

The Board reviewed a number of previous decisions where the Board found that no-fault insurance payments were "income" and were not awards for pain and suffering. The Board has also concluded that parts of no-fault insurance payments are not "income" in certain circumstances.

In the present case, the Board found that the payments received were "income", both according to the broad definition of the word as it appears in section 15(1) and according to the specific types of income described in

GENERAL WELFARE ASSISTANCE ACT

section 15(2)2. The Board also found that the payments were not awards for damages or compensation for pain and suffering.

The Board accepted the Appellant's explanation that he did not know that the payments were deductible income and that the unexpected reduction in his assistance had caused hardship. However, the Board determined that the reduced amount was correctly calculated.

The Board also found that the Appellant had actually and reasonably incurred expenses as a result of his injury and that these expenses were not deductible income. The Board referred the determination of these expenses to the Administrator. **Appeal granted in part. Decision of the Administrator affirmed in part.** (9 pp; English) ■

REFERENCES: O.Reg. 537 s.15(2)2, s.15(2)44 ■

SELF-EMPLOYED

Other Index Terms: PERSON IN NEED

File Number: K1126-04

Date of Hearing: July 14, 1992

The Appellant and his wife owned and operated a sporting goods store. It required only one person to operate the store. Since the income from this operation was only \$4,000 per year one of the spouses had to work in another capacity. Over the years each of them had worked at a number of different jobs while the other operated the store. In 1991 they were unable to find any other work. When they applied for assistance, they were denied on the grounds that they were self-employed and therefore not eligible according to subsection 1(3) of Regulation 441. The question before the Board was whether the

Appellant was automatically excluded from eligibility because the Administrator considered the operation of a store to be "self-employment".

Since the term "self-employment" is not defined in the legislation the context and scheme of the legislation must be taken into account when interpreting it. In order to qualify for assistance an employable person must meet certain job-willingness and job-search requirements. The Board believes that it is reasonable to define self-employment as activity that interferes with these requirements. Therefore, self-employment activity so minimal that it does not interfere with job requirements should not be considered to be self-employment under the legislation.

The Board noted that the unemployment insurance legislation provides support for this approach. To qualify under that legislation a person must demonstrate that he or she is unemployed and available for work, requirements that are similar to General Welfare Assistance legislation. The unemployment insurance legislation likewise excludes most self-employed people from eligibility. However, it does not encompass self-employment activity that is "so minor in extent that a person would not normally follow it as a principle means of livelihood". Moreover, unemployment insurance cases also consider factors such as the time spent in the self-employment activity and job search efforts.

In the present case the store operation did not interfere with the Appellant's job search capabilities. Moreover, their past history proved that the couple were capable of both operating the store and working full-time. The Board accepted the Appellant's testimony about their job search activities and concluded that his self-employment activity was so

minor that it did not provide a principle means of livelihood.

The Board further noted that the legislation says that a self-employed person cannot be considered a "person in need" unless he or she is unemployable or the head of a family whose spouse is absent. It does not say that a self-employed person cannot receive assistance. Generally speaking, only one member of the family unit must qualify as a "person in need". However, if an applicant is a person in need but the applicant's spouse is self-employed, is the whole family unit ineligible? Does the outcome of the case depend upon which spouse applies? The legislation seems to suggest that the applicant must meet the definition of a person in need while the dependent adult spouse must satisfy the job search requirements. The Board found the Appellant in this case fulfilled the requirements of section 3(1)(c) and that his wife was also seeking employment. The Board concluded that the family unit was eligible. **Appeal granted. Decision of the Administrator rescinded.** (8 pp; English)

REFERENCES: O.Reg. 441 s.1(3) ■

UNEMPLOYED PERSON

Other Index Terms: EVIDENCE

File Number: K1210-15

Date of Hearing: July 15, 1992

After the Appellant's second child was born, his wife became ill, and she found it impossible to cope with an infant and a two-year-old child at the same time. The couple had no relatives, neighbours, or friends who could help them with child care. The Appellant decided it was necessary for him to stay home to provide child care for a period of time. He applied for paternity benefits from

Unemployment Insurance. He also applied for General Welfare Assistance to support them financially while waiting for these benefits to begin.

However, the Appellant did not tell the Administrator about his wife's medical condition before the hearing. The Administrator therefore determined that the Appellant was employable and could have continued with his employment. Assistance was denied. At the hearing, the Administrator acknowledged that if the circumstances outlined in section 3(1)(d) of Regulation 441 were those of the Appellant, i.e. that the Appellant had to stay at home because there was no adequate care and supervision for a dependent child, he might be eligible.

The first question before the Board to meet the requirements of section 3(1)(d) was whether the Appellant was an "unemployed but unemployable person". The Board found that the Appellant was unable to engage in remunerative employment while he was on parental leave and was therefore an "employable person" within the meaning of the Act. Moreover, he was not employed at the time he applied for assistance and was therefore also "unemployed".

The Board noted that the *Unemployment Insurance Act* describes that parental leave is payable "for each week of unemployment [emphasis added] in the period". This Act, therefore, also considers that the individual on parental leave is unemployed. Although not bound by this legislation, the Board noted that this definition is consistent with the definition of unemployment in the *General Welfare Assistance Act*. The Board concluded that section 3(1)(d) of O.Reg. 441 applied to the Appellant, who was an unemployed employable person while he was on parental leave.

The second question before the Board was

VOCATIONAL REHABILITATION SERVICES ACT

whether there was evidence that the Appellant had to stay at home because there was no adequate care and supervision for a dependent child. The Appellant testified that he had initially returned to work after the birth of his child, but had to reconsider because of his wife's predicament. Her asthma had become acute and she was recovering from a difficult birth, which meant that she could not move quickly enough to control the behaviour of the two-year old.

The Appellant admitted that he had not mentioned his wife's health at the time of the home visit, nor did the worker enquire about it. He testified that he would have explained why he considered it necessary to stay at home had he been asked and had he known it was his responsibility to do so. However, his English was poor and most of the conversation was between the worker and the Appellant's wife. The Appellant's friend and witness also testified that the two year old child was playing in potentially dangerous situations and that the wife was unable to manage without another adult with her.

The Appellant's personal testimony and that of his friend was the only evidence before the Board. In the absence of a spokesperson for the Administrator, this testimony was unchallenged. The Appellant's English was poor and he was unfamiliar with the General Welfare system or his responsibilities within it. The Board therefore accepted the Appellant's testimony, despite its limitations, and found that the legislative requirements had been met. **Appeal granted. Decision of the Administrator rescinded.** (8 pp; English)

REFERENCES: *General Welfare Assistance Act* s.1(n); *Unemployment Insurance Act* (Canada) s.20(2); O.Reg. 441 s.3(1)(d)(i), s.3(1)(d)(ii) ■

PART III

DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

GOODS, ALLOWANCES OR SERVICES

Other Index Terms: DISABLED PERSON

File Number: K1030-25

Date of Hearing: July 7, 1992

The Appellant, a disabled person with paraplegia, applied for Vocational Rehabilitation Services to have an elevator and external elevator shaft installed in the home of his common law spouse. A chair lift was not feasible since the house had a spiral staircase.

The Appellant submitted that he required access to the second floor because of the inconvenience of sleeping on a couch downstairs. This affected his sleep and did not provide any privacy. He claimed that the lack of sleep affected his employment.

The *Vocational Rehabilitation Services Act* states that a "disabled person" is a person who because of physical or mental impairment is incapable of pursuing regularly any substantially gainful occupation. The issue in this appeal is whether the Appellant was a disabled person who was eligible for services. The Appellant had been gainfully employed as a dispatcher for three years. The Board found that, since the Appellant was gainfully employed, he could not be considered a

disabled person under the Act.

The Appellant further submitted that his lack of sleep had precipitated a vocational crisis that required modifications to the home. The term "vocational crisis" appears in the policy manual and refers to a situation where a disabled person is in jeopardy of losing his occupation because of disability and Vocational Rehabilitation Services are needed to prevent this. The question in this case was whether denying services would be detrimental to the Appellant's job.

The Director's spokesperson did not dispute the need for the elevator but submitted that it was a personal need, not a vocational need.

The Board found that the Appellant did not provide evidence to show that his employment had suffered because of lack of sleep. Without evidence, such as a letter from his employer indicating that his work had deteriorated to the extent where he was likely to lose his job, the Appellant's situation did not constitute a vocational crisis. The Board concluded that the Appellant's lack of sleep resulted from his living arrangements and that his disability was an indirect cause of this problem. **Appeal denied. Decision of the Director affirmed.** (6 pp; English)

REFERENCES: *Vocational Rehabilitation Services Act* s.1(b), s.8 ■

VOCATIONALLY DISABLED

File Number: L1208-43

Date of Hearing: July 21, 1993

The Appellant had a history of substance abuse, depression, and personality disorder due to childhood trauma. Her doctor stated that her medical conditions of irritable bowel syndrome, endometriosis, and eczema were

worsening because of a difficult work situation with her supervisor. The doctor decided that the best treatment for the Appellant was to be off work until her condition improved, and to seek a transfer to another department or alternate employment.

The Director agreed that the Appellant had a disability but argued that she did not have a vocational handicap. Her case had been thoroughly considered and referred to an addiction consultation committee, which is a committee that reviews addiction cases where eligibility is unclear. The Director argued that the Appellant had permanent employment with a large government department, that her performance was fully satisfactory, and that she had transferrable job skills.

The Appellant's legal representative submitted that the nature of the Appellant's secretarial job aggravated her disability. It was the Appellant's belief that a secretarial position holds the employee responsible for difficulties and problems that are the fault and responsibility of the principal. Moreover, in the Appellant's view, the contribution of a secretary is minimized whereas the views, needs, and desires of the principal are valued above those of the secretary. These conditions were similar to the family problems she had experienced as a child and that had caused her dysfunctional behaviour.

The Appellant's legal representative argued that because of these factors the Appellant was not working at optimum capacity, and that "optimum capacity" does not refer to the ultimate potential of the individual but rather to a state where the person can exercise his or her abilities in a field to which those abilities are suited. The Board agreed that this was the interpretation of the phrase as found in *Re: De Boni and the Director of the Vocational Rehabilitation Services Branch*; however, other cases have found that a person who is

VOCATIONAL REHABILITATION SERVICES ACT

capable of pursuing any occupation at an acceptable level is not eligible for VRS. Moreover, the doctor stated that while a return to the Appellant's present work site would jeopardize her recovery, the doctor did not state that working at a different secretarial job would do so. The Board concluded that the goal of VRS is not to determine which type of work offers the ultimate job

satisfaction, but merely to help applicants to the point where they can be employed doing something of which they are capable, on an ongoing basis.

REFERENCES: O.Reg. 943 s.1(2); *Re: De Boni and the Director of the Vocational Rehabilitation Services Branch of the Ministry of Community and Social Services*, Div. Ct. (unreported) ■

CUMULATIVE INDEX

This index includes cases published in Volume 3:1, 3:2, and 3:3 of
SUMMARIES OF DECISIONS

PART I: DECISIONS UNDER THE FAMILY BENEFITS ACT

APPLICATIONS

L0420-16
Volume 3:1 MAY 1993 p.5

ASSETS

L1231-08
Volume 3:3 NOV 1993 p.7

ASSIGNMENT

J0313-15R
Volume 3:1 MAY 1993 p.5

AVAILABLE FINANCIAL RESOURCE

J0510-09
Volume 3:3 NOV 1993 p.10
K0707-14
Volume 3:3 NOV 1993 p.5
L0602-17
Volume 3:1 MAY 1993 p.5

BENEFICIARIES

J1002-03R.1
Volume 3:2 JUL 1993 p.11

CO-RESIDENCE

L0304-14
Volume 3:3 NOV 1993 p.6

CREDIBILITY

K1027-32
Volume 3:1 MAY 1993 p.9
K1226-12
Volume 3:2 JUL 1993 p.15
L1222-28
Volume 3:3 NOV 1993 p.9
L1231-08
Volume 3:3 NOV 1993 p.7

DAMAGES OR COMPENSATION FOR PAIN AND SUFFERING

K0715-32
Volume 3:1 MAY 1993 p.7

DEPENDENT CHILD OR CHILDREN

J1002-03R.1
Volume 3:2 JUL 1993 p.11

SUMMARIES OF DECISIONS VOL. 3:3

CUMULATIVE INDEX

| | | | |
|---|----------|------|--|
| L0212-01 | | | |
| Volume 3:3 | NOV 1993 | p.8 | |
| L0524-26 | | | |
| Volume 3:2 | JUL 1993 | p.6 | |
| L0629-19 | | | |
| Volume 3:2 | JUL 1993 | p.7 | |
| DISCRETION | | | |
| K0820-01 | | | |
| Volume 3:1 | MAY 1993 | p.6 | |
| L0602-17 | | | |
| Volume 3:1 | MAY 1993 | p.5 | |
| L0722-21 | | | |
| Volume 3:2 | JUL 1993 | p.5 | |
| FAILURE TO PROVIDE INFORMATION | | | |
| J0510-09 | | | |
| Volume 3:3 | NOV 1993 | p.10 | |
| L0229-07 | | | |
| Volume 3:2 | JUL 1993 | p.9 | |
| L1222-28 | | | |
| Volume 3:3 | NOV 1993 | p.9 | |
| FAIRNESS | | | |
| J0510-09 | | | |
| Volume 3:3 | NOV 1993 | p.10 | |
| FOSTER PARENTS AND CHILDREN | | | |
| K0820-01 | | | |
| Volume 3:1 | MAY 1993 | p.6 | |
| FRAUD | | | |
| L1231-08 | | | |
| Volume 3:3 | NOV 1993 | p.7 | |
| HANDICAPPED CHILDREN | | | |
| L0722-21 | | | |
| Volume 3:2 | JUL 1993 | p.5 | |
| HOMES, HOSPITALS, AND INSTITUTIONS, PATIENT OR RESIDENT IN | | | |
| K0715-32 | | | |
| Volume 3:1 | MAY 1993 | p.7 | |
| INCOME | | | |
| K1111-12 | | | |
| Volume 3:2 | JUL 1993 | p.12 | |
| L0103-02 | | | |
| Volume 3:3 | NOV 1993 | p.13 | |
| L1231-08 | | | |

| | | | |
|----------------------------------|----------|------|--|
| Volume 3:3 | NOV 1993 | p.7 | |
| INSURANCE | | | |
| J0313-15R | | | |
| Volume 3:1 | MAY 1993 | p.8 | |
| K0715-32 | | | |
| Volume 3:1 | MAY 1993 | p.7 | |
| L0211-20 | | | |
| Volume 3:3 | NOV 1993 | p.12 | |
| JOINT CUSTODY | | | |
| L0524-26 | | | |
| Volume 3:2 | JUL 1993 | p.6 | |
| L0629-19 | | | |
| Volume 3:2 | JUL 1993 | p.7 | |
| JURISDICTIONAL ISSUES | | | |
| J1002-03R.2 | | | |
| Volume 3:2 | JUL 1993 | p.14 | |
| L0629-19 | | | |
| Volume 3:2 | JUL 1993 | p.7 | |
| LIQUID ASSETS | | | |
| K1027-04 | | | |
| Volume 3:2 | JUL 1993 | p.10 | |
| L0211-20 | | | |
| Volume 3:3 | NOV 1993 | p.12 | |
| L0229-07 | | | |
| Volume 3:2 | JUL 1993 | p.9 | |
| L1222-28 | | | |
| Volume 3:3 | NOV 1993 | p.9 | |
| ONTARIO MOTORIST PROTECTION PLAN | | | |
| J0313-15R | | | |
| Volume 3:1 | MAY 1993 | p.8 | |
| OVERPAYMENTS | | | |
| J0313-15R | | | |
| Volume 3:1 | MAY 1993 | p.8 | |
| K1027-04 | | | |
| Volume 3:2 | JUL 1993 | p.10 | |
| PARTIES | | | |
| J1002-03R.1 | | | |
| Volume 3:2 | JUL 1993 | p.11 | |
| PAYMENTS RECEIVED | | | |
| K0715-32 | | | |
| Volume 3:1 | MAY 1993 | p.7 | |

NOVEMBER 1993

CUMULATIVE INDEX

| | | | |
|---------------------------------|----------|--|------|
| K1111-12 | | | |
| Volume 3:2 | JUL 1993 | | p.12 |
| L0103-02 | | | |
| Volume 3:3 | NOV 1993 | | p.13 |
| PROCEDURES | | | |
| J1002-03R.1 | | | |
| Volume 3:2 | JUL 1993 | | p.11 |
| PUTATIVE FATHER | | | |
| J0510-09 | | | |
| Volume 3:3 | NOV 1993 | | p.10 |
| K0707-14 | | | |
| Volume 3:3 | NOV 1993 | | p.5 |
| RECONSIDERATIONS | | | |
| J1002-03R.1 | | | |
| Volume 3:2 | JUL 1993 | | p.11 |
| J1002-03R.2 | | | |
| Volume 3:2 | JUL 1993 | | p.14 |
| SPOUSE | | | |
| J1002-03R.2 | | | |
| Volume 3:2 | JUL 1993 | | p.14 |
| K1027-32 | | | |
| Volume 3:1 | MAY 1993 | | p.9 |
| SUPPORT OR MAINTENANCE PAYMENTS | | | |
| K0707-14 | | | |
| Volume 3:3 | NOV 1993 | | p.5 |
| K1111-12 | | | |
| Volume 3:2 | JUL 1993 | | p.12 |
| TRUSTS | | | |
| K1226-12 | | | |
| Volume 3:2 | JUL 1993 | | p.15 |

PART II: DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

AGE

| | | | |
|------------|----------|--|------|
| G1208-21 | | | |
| Volume 3:3 | NOV 1993 | | p.14 |
| K0117-06 | | | |
| Volume 3:1 | MAY 1993 | | p.10 |

APPLICATIONS

| | | | |
|------------|----------|--|------|
| K0513-08 | | | |
| Volume 3:1 | MAY 1993 | | p.13 |

ASSIGNMENT

| | | | |
|------------|----------|--|------|
| L1109-06 | | | |
| Volume 3:3 | NOV 1993 | | p.14 |

AVAILABLE FINANCIAL RESOURCE

| | | | |
|------------|----------|--|------|
| L0402-36 | | | |
| Volume 3:3 | NOV 1993 | | p.16 |

BANKRUPTCY

| | | | |
|------------|----------|--|------|
| K0530-15 | | | |
| Volume 3:1 | MAY 1993 | | p.12 |
| K1120-14 | | | |
| Volume 3:1 | MAY 1993 | | p.11 |

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

| | | | |
|------------|----------|--|------|
| G1208-21 | | | |
| Volume 3:3 | NOV 1993 | | p.14 |
| K1013-22 | | | |
| Volume 3:3 | NOV 1993 | | p.15 |
| K0117-06 | | | |
| Volume 3:1 | MAY 1993 | | p.10 |

CASUAL GIFTS OR PAYMENTS

| | | | |
|------------|----------|--|------|
| L0427-13 | | | |
| Volume 3:2 | JUL 1993 | | p.22 |

CO-RESIDENCE

| | | | |
|------------|----------|--|------|
| K0306-10 | | | |
| Volume 3:2 | JUL 1993 | | p.16 |

DAMAGES OR COMPENSATION FOR PAIN AND SUFFERING

| | | | |
|------------|----------|--|------|
| M0217-20 | | | |
| Volume 3:3 | NOV 1993 | | p.17 |

DISCRETION

| | | | |
|------------|----------|--|------|
| L0403-11 | | | |
| Volume 3:2 | JUL 1993 | | p.20 |
| L0416-04 | | | |
| Volume 3:2 | JUL 1993 | | p.17 |
| L0318-01 | | | |
| Volume 3:2 | JUL 1993 | | p.19 |

EMPLOYABLE PERSON

| | | | |
|----------|--|--|--|
| L0318-01 | | | |
|----------|--|--|--|

SUMMARIES OF DECISIONS VOL. 3:3

CUMULATIVE INDEX

| | | |
|--------------------------------|----------|------|
| Volume 3:2 | JUL 1993 | p.19 |
| EVIDENCE | | |
| K0117-06 | | |
| Volume 3:1 | MAY 1993 | p.10 |
| K0306-10 | | |
| Volume 3:2 | JUL 1993 | p.16 |
| K1210-15 | | |
| Volume 3:3 | NOV 1993 | p.19 |
| EXTENSION OF TIME | | |
| K0105-04 | | |
| Volume 3:1 | MAY 1993 | p.12 |
| K0530-15 | | |
| Volume 3:1 | MAY 1993 | p.12 |
| K1120-14 | | |
| Volume 3:1 | MAY 1993 | p.11 |
| FAILURE TO PROVIDE INFORMATION | | |
| L0416-04 | | |
| Volume 3:2 | JUL 1993 | p.17 |
| FAIRNESS | | |
| L0403-11 | | |
| Volume 3:2 | JUL 1993 | p.20 |
| HEAD OF A FAMILY | | |
| L0402-36 | | |
| Volume 3:3 | NOV 1993 | p.16 |
| INCOME | | |
| K0326-25 | | |
| Volume 3:1 | MAY 1993 | p.15 |
| L1029-44 | | |
| Volume 3:2 | JUL 1993 | p.18 |
| JOB SEARCH | | |
| L0318-01 | | |
| Volume 3:2 | JUL 1993 | p.19 |
| JOINT CUSTODY | | |
| K0513-08 | | |
| Volume 3:1 | MAY 1993 | p.13 |
| JURISDICTIONAL ISSUES | | |
| K0117-06 | | |
| Volume 3:1 | MAY 1993 | p.10 |
| LIQUID ASSETS | | |
| L0403-11 | | |

NOVEMBER 1993

| | | |
|----------------------------------|----------|------|
| Volume 3:2 | JUL 1993 | p.20 |
| ONUS | | |
| K1224-03 | | |
| Volume 3:2 | JUL 1993 | p.20 |
| L0416-04 | | |
| Volume 3:2 | JUL 1993 | p.17 |
| ONTARIO MOTORIST PROTECTION PLAN | | |
| M0217-20 | | |
| Volume 3:3 | NOV 1993 | p.17 |
| OVERPAYMENTS | | |
| K0306-10 | | |
| Volume 3:2 | JUL 1993 | p.16 |
| K1120-14 | | |
| Volume 3:1 | MAY 1993 | p.11 |
| PAYMENTS RECEIVED | | |
| K0326-25 | | |
| Volume 3:1 | MAY 1993 | p.15 |
| M0217-20 | | |
| Volume 3:3 | NOV 1993 | p.17 |
| PERSON IN NEED | | |
| K1126-04 | | |
| Volume 3:3 | NOV 1993 | p.18 |
| PREGNANCY ALLOWANCE | | |
| K0513-08 | | |
| Volume 3:1 | MAY 1993 | p.13 |
| PRINCIPAL RESIDENCE | | |
| L0403-11 | | |
| Volume 3:2 | JUL 1993 | p.20 |
| PROCEDURES | | |
| K0117-06 | | |
| Volume 3:1 | MAY 1993 | p.10 |
| REFUGEES | | |
| L0416-04 | | |
| Volume 3:2 | JUL 1993 | p.17 |
| RENTALS | | |
| K0326-25 | | |
| Volume 3:1 | MAY 1993 | p.15 |
| SELF-EMPLOYED | | |
| K1126-04 | | |

CUMULATIVE INDEX

| | | |
|--------------------------------------|----------|------|
| Volume 3:3 | NOV 1993 | p.18 |
| SINGLE PERSON | | |
| K1013-22 | | |
| Volume 3:3 | NOV 1993 | p.15 |
| S.T.E.P. | | |
| K0513-08 | | |
| Volume 3:1 | MAY 1993 | p.13 |
| L1029-44 | | |
| Volume 3:2 | JUL 1993 | p.18 |
| STUDENTS | | |
| K1117-09 | | |
| Volume 3:1 | MAY 1993 | p.16 |
| L0402-36 | | |
| Volume 3:3 | NOV 1993 | p.16 |
| UNEMPLOYED PERSON | | |
| K1210-15 | | |
| Volume 3:3 | NOV 1993 | p.19 |
| WAGES, SALARIES, AND CASUAL EARNINGS | | |
| L0427-13 | | |
| Volume 3:2 | JUL 1993 | p.22 |

PART III: DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

| | | |
|-------------------|----------|------|
| CREDIBILITY | | |
| L0525-16 | | |
| Volume 3:1 | MAY 1993 | p.17 |
| DISABLED PERSON | | |
| K1030-25 | | |
| Volume 3:3 | NOV 1993 | p.20 |
| EXTENSION OF TIME | | |
| H0906-09R | | |
| Volume 3:1 | MAY 1993 | p.18 |
| FAMILY BENEFITS | | |
| H0906-09R | | |
| Volume 3:1 | MAY 1993 | p.18 |

| | | |
|-------------------------------|----------|------|
| GOODS, ALLOWANCES OR SERVICES | | |
| K1030-25 | | |
| Volume 3:3 | NOV 1993 | p.20 |
| RECONSIDERATIONS | | |
| H0906-09R | | |
| Volume 3:1 | MAY 1993 | p.18 |
| VOCATIONALLY DISABLED | | |
| L1208-43 | | |
| Volume 3:3 | NOV 1993 | p.21 |

REFERENCES TO STATUTES AND REGULATIONS

Bankruptcy Act

| | | |
|------------|----------|------|
| s.69(1) | | |
| K1120-14 | | |
| Volume 3:1 | MAY 1993 | p.11 |
| s.124(1) | | |
| K1120-14 | | |
| Volume 3:1 | MAY 1993 | p.11 |

Canadian Charter of Rights and Freedoms

| | | |
|------------|----------|------|
| s.1 | | |
| G1208-21 | | |
| Volume 3:3 | NOV 1993 | p.14 |
| s.15(1) | | |
| G1208-21 | | |
| Volume 3:3 | NOV 1993 | p.14 |
| K1013-22 | | |
| Volume 3:3 | NOV 1993 | p.15 |

Children's Law Reform Act

| | | |
|-------------|----------|------|
| J1002-03R.2 | | |
| Volume 3:2 | JUL 1993 | p.14 |

Divorce Act, 1985

| | | |
|------------|----------|------|
| s.2(1)(b) | | |
| K1111-12 | | |
| Volume 3:2 | JUL 1993 | p.12 |

Family Benefits Act

| | | |
|------------|----------|-----|
| s.1(f) | | |
| L0629-19 | | |
| Volume 3:2 | JUL 1993 | p.7 |

SUMMARIES OF DECISIONS VOL. 3:3

CUMULATIVE INDEX

| | | | | |
|---------------------------------------|-------------|----------|------|--|
| | L0212-01 | | | |
| s.7(1) | Volume 3:3 | NOV 1993 | p.8 | |
| | K0715-32 | | | |
| s.7(1)(d) | Volume 3:1 | MAY 1993 | p.7 | |
| | L0212-01 | | | |
| s.7(1)(f) | Volume 3:3 | NOV 1993 | p.8 | |
| | K0820-01 | | | |
| s.12(a) | Volume 3:1 | MAY 1993 | p.6 | |
| | J0510-09 | | | |
| s.12(b) | Volume 3:3 | NOV 1993 | p.10 | |
| | J0510-09 | | | |
| s.13(6) | Volume 3:3 | NOV 1993 | p.10 | |
| | H0906-09R | | | |
| s.14(4) | Volume 3:1 | MAY 1993 | p.18 | |
| | J1002-03R.1 | | | |
| | Volume 3:2 | JUL 1993 | p.11 | |
| <u>Family Law Act</u> | | | | |
| s.30 | J1002-03R.2 | | | |
| | Volume 3:2 | JUL 1993 | p.14 | |
| s.31(1) | J1002-03R.2 | | | |
| | Volume 3:2 | JUL 1993 | p.14 | |
| s.33(9)(a) | J1002-03R.2 | | | |
| | Volume 3:2 | JUL 1993 | p.14 | |
| s.33(9)(m) | J1002-03R.2 | | | |
| | Volume 3:2 | JUL 1993 | p.14 | |
| <u>General Welfare Assistance Act</u> | | | | |
| s.1(n) | K1210-15 | | | |
| | Volume 3:3 | NOV 1993 | p.19 | |
| s.4(2) | K0513-08 | | | |
| | Volume 3:1 | MAY 1993 | p.13 | |
| s.10(2)(b) | L0416-04 | | | |
| | Volume 3:2 | JUL 1993 | p.17 | |
| s.10(3) | K0513-08 | | | |

| | | | | |
|--|-------------|----------|------|--|
| | Volume 3:1 | MAY 1993 | p.13 | |
| s.11(2) | K0105-04 | | | |
| | Volume 3:1 | MAY 1993 | p.12 | |
| s.11(3) | K0530-15 | | | |
| | Volume 3:1 | MAY 1993 | p.12 | |
| s.12 | K1120-14 | | | |
| | Volume 3:1 | MAY 1993 | p.11 | |
| <u>Interpretation Act</u> | | | | |
| s.4 | L0524-26 | | | |
| | Volume 3:2 | JUL 1993 | p.6 | |
| <u>Ministry of Community and Social Services Act</u> | | | | |
| s.12(1) | J1002-03R.1 | | | |
| | Volume 3:2 | JUL 1993 | p.11 | |
| <u>Ontario Regulation 318, R.R.O. 1980</u> | | | | |
| s.1(1)(a) | L0229-07 | | | |
| | Volume 3:2 | JUL 1993 | p.9 | |
| | L0211-20 | | | |
| s.2(5) | Volume 3:3 | NOV 1993 | p.12 | |
| | K0715-32 | | | |
| s.2(7) | Volume 3:1 | MAY 1993 | p.7 | |
| | L0524-26 | | | |
| s.5(b) | Volume 3:2 | JUL 1993 | p.6 | |
| | K1027-32 | | | |
| s.7(1) | Volume 3:1 | MAY 1993 | p.9 | |
| | L0211-20 | | | |
| s.8 | Volume 3:3 | NOV 1993 | p.12 | |
| | K0707-14 | | | |
| | Volume 3:3 | NOV 1993 | p.5 | |
| | K0820-01 | | | |
| | Volume 3:1 | MAY 1993 | p.6 | |
| | L0229-07 | | | |
| | Volume 3:2 | JUL 1993 | p.27 | |
| s.13(1) | K0715-32 | | | |

NOVEMBER 1993

CUMULATIVE INDEX

| | | | |
|---|------------|----------|------|
| | Volume 3:1 | MAY 1993 | p.7 |
| | L0103-02 | | |
| | Volume 3:3 | NOV 1993 | p.13 |
| s.13(2)1 | J0313-15R | | |
| | Volume 3:1 | MAY 1993 | p.8 |
| s.13(2)7 | J0313-15R | | |
| | Volume 3:1 | MAY 1993 | p.8 |
| | K0715-32 | | |
| | Volume 3:1 | MAY 1993 | p.7 |
| s.13(2)8 | L0103-02 | | |
| | Volume 3:3 | NOV 1993 | p.13 |
| s.14(3) | L0420-16 | | |
| | Volume 3:1 | MAY 1993 | p.4 |
| s.38(1) | L0722-21 | | |
| | Volume 3:2 | JUL 1993 | p.5 |
| s.38(2) | L0722-21 | | |
| | Volume 3:2 | JUL 1993 | p.5 |
| s.41(1) | L0304-14 | | |
| | Volume 3:3 | NOV 1993 | p.6 |
| <u>Ontario Regulation 441</u> , R.R.O. 1980 | | | |
| s.1(1)(k) | L0403-11 | | |
| | Volume 3:2 | JUL 1993 | p.20 |
| s.1(1)(n)(ii) | K0117-06 | | |
| | Volume 3:1 | MAY 1993 | p.10 |
| | K1013-22 | | |
| | Volume 3:3 | NOV 1993 | p.15 |
| s.1(3) | K1126-04 | | |
| | Volume 3:3 | NOV 1993 | p.18 |
| s.1(4) | L0402-36 | | |
| | Volume 3:3 | NOV 1993 | p.16 |
| s.3(1b) | K1117-09 | | |
| | Volume 3:1 | MAY 1993 | p.16 |
| | L0318-01 | | |
| | Volume 3:2 | JUL 1993 | p.19 |
| s.3(1b)(i) | L0318-01 | | |

| | | | |
|--------------------|------------|----------|------|
| | Volume 3:1 | JUL 1993 | p.19 |
| s.3(1)(d)(i) | K1210-15 | | |
| | Volume 3:3 | NOV 1993 | p.19 |
| s.3(1)(d)(ii) | K1210-15 | | |
| | Volume 3:3 | NOV 1993 | p.19 |
| s.3(3)(a) | L0318-01 | | |
| | Volume 3:2 | JUL 1993 | p.19 |
| s.3(3)(b) | L0602-17 | | |
| | Volume 3:1 | MAY 1993 | p.5 |
| s.6(1)(c) | K1117-09 | | |
| | Volume 3:1 | MAY 1993 | p.16 |
| s.12(2)7 | K0513-08 | | |
| | Volume 3:1 | MAY 1993 | p.13 |
| s.13(1)(a) and (b) | K0326-25 | | |
| | Volume 3:1 | MAY 1993 | p.15 |
| s.13(2)1 | K0513-08 | | |
| | Volume 3:1 | MAY 1993 | p.13 |
| s.13(2)13 | K0326-25 | | |
| | Volume 3:1 | MAY 1993 | p.15 |
| s.31(2)22 | L0427-13 | | |
| | Volume 3:2 | JUL 1993 | p.22 |

Ontario Regulation 537, R.R.O. 1990

| | | | |
|-----------|------------|----------|------|
| s.5(1) | L1109-06 | | |
| | Volume 3:3 | NOV 1993 | p.14 |
| s.15(2) | L1029-44 | | |
| | Volume 3:2 | JUL 1993 | p.18 |
| s.15(2)2 | M0217-20 | | |
| | Volume 3:3 | NOV 1994 | p.17 |
| s.15(2)44 | M0217-20 | | |
| | Volume 3:3 | NOV 1994 | p.17 |

Ontario Regulation 943, R.R.O. 1990

s.1(2)

CUMULATIVE INDEX

L1208-43
Volume 3:3 NOV 1994 p.21

Statutory Powers and Procedure Act s.5

J1002-03R.1
Volume 3:2 JUL 1993 p.11

Unemployment Insurance Act s.20(2)

K1210-15
Volume 3:3 NOV 1993 p.19

Vocational Rehabilitation Services Act s.1(b)

K1030-25
Volume 3:3 NOV 1993 p.20

s.8
K1030-25
Volume 3:3 NOV 1993 p.20

s.9(b)
L0525-16
Volume 3:1 MAY 1993 p.17

s.9(c)
L0525-16
Volume 3:1 MAY 1993 p.17

REFERENCES TO MANUALS

Family Benefits Policy and Procedural Guidelines Manual

Policy 0203-02
K0513-08
Volume 3:1 MAY 1993 p.13

Policy 0404-05
L0212-01
Volume 3:3 NOV 1993 p.8

Policy 0503-03
K1120-14
Volume 3:1 MAY 1993 p.11

General Welfare Policy Guidelines GW 0304-03

K0513-08
Volume 3:1 MAY 1993 p.13

DEFINITIONS

"absent"

L0402-36
Volume 3:3 NOV 1993 p.16

"dependent for support and maintenance"

K0513-08
Volume 3:1 MAY 1993 p.13

"earnings"

L0427-13
Volume 3:2 JUL 1993 p.22

"living with"

J1002-03R.2
Volume 3:2 JUL 1993 p.14

K0117-06
Volume 3:1 MAY 1993 p.10

K0513-08
Volume 3:1 MAY 1993 p.13

"on behalf of"

K0715-32
Volume 3:1 MAY 1993 p.7

"residence"

K0715-32
Volume 3:1 MAY 1993 p.7

"shared accommodation"

L0304-14
Volume 3:3 NOV 1993 p.6

"spouse"

J1002-03R.2
Volume 3:2 JUL 1993 p.14

"support"

K1111-12
Volume 3:2 JUL 1993 p.12

"supported by"

L0212-01
Volume 3:3 NOV 1993 p.8

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ORGANIZATION

This publication is divided into three parts. Part I contains summaries of decisions that relate to the Family Benefits Act. Part II contains summaries of decisions relating to the General Welfare Assistance Act, and Part III contains summaries of decisions relating to the Vocational Rehabilitation Services Act.

Each decision summarized in this publication is assigned a number of different index terms which reflect its content. The summaries appear under the one heading which best expresses the most noteworthy issue under discussion in each decision. This heading is in **BOLD** type at the beginning of each summary. These headings are arranged in alphabetical order within Part I, Part II, and Part III.

Other index terms which apply to a decision are listed separately to provide a further indicator of content.

Example:

CATEGORICAL ELIGIBILITY

OTHER INDEX TERMS: JOINT CUSTODY; RECONSIDERATIONS;
SINGLE PARENT WITH DEPENDENT CHILDREN

FILE NUMBERS

Each decision is identified by an alphanumeric File Number which appears on the summary in **BOLD** type. This number should be used to identify SARB decisions or to order copies. All decisions from Hearings on Reconsideration have the letter R added to the end.

HOW TO USE THIS PUBLICATION

Example:

File Number: F0927-16R

DATE OF HEARING

This date provides an indicator of the age of the decision.

THE SUMMARIES

Each summary is a brief statement of the most important facts of the decision and of the findings of the Board. It is not a guide to the arguments presented by the parties or to the Board's reasoning and analysis. For full insight into these matters readers must consult the full text of the decision. Instructions for obtaining copies of decisions appear on the last page of this publication.

The disposition of the case, the number of pages in the full-text version of the decision, and the language in which the decision was written appear as the last sentence in the summary. Certain decisions have both an English and French language version available.

Example:

Appeal denied. (16 pp English; or 18 pp French)

REFERENCES

These references are to documents and authorities considered in and commented on in some detail by the Board in its findings. They are further indicators of the relevance of the decision. The list may include, in this order: federal and provincial statutes, regulations, cases, books, treatises, and manuals. Terms whose meanings are discussed in a significant way appear in quotation marks at the end of the list.

Example:

General Welfare Assistance Act s.7(1); Re Richardson and the Commissioner of Metropolitan Toronto Department of Social Services (1988), 46 O.R. (2d) 63; "reside"

CUMULATIVE INDEX

A cumulative index to this publication is included with each issue. Use it to find summaries of decisions on specific subjects of interest to you.

References to summaries in the current issue are integrated with references from preceding issues in this list. Therefore, the most recent index can also be used to find decisions summarized in previous issues. KEEP YOUR BACK ISSUES FOR FUTURE REFERENCE. At the beginning of each volume we will begin a new index.

The cumulative index is divided into the same three parts as the rest of the publication. Part I of the index refers to the Family Benefits Act. Part II refers to the General Welfare Assistance Act, and Part III to the Vocational Rehabilitation Services Act.

The index is arranged in alphabetical order by subject within each of the Parts. Each decision appears under several different index terms to provide a detailed guide to its content. Note that headings are of many different types. Factual, procedural, and conceptual terms are used and the names of statutes or programs may also appear as index terms.

Example:

| | |
|--|--------------|
| DRUG BENEFIT | (factual) |
| EXTENSION OF TIME | (procedural) |
| ONUS | (conceptual) |
| <u>CANADIAN CHARTER OF RIGHTS AND FREEDOMS</u> | (statute) |
| S.T.E.P. | (program) |

HOW TO USE THIS PUBLICATION

The index terms are upper case. The line below shows the File Numbers of all of the decisions which contain information on these subjects.

Example:

EXTENSION OF TIME

H0321-05

Volume 2:3 OCT 1992 p.5

Information under the File Number shows where that particular summary originally appeared in our publication. The issue number and date and the page number are provided. ■

PART I

DECISIONS UNDER THE
FAMILY BENEFITS ACT

The transfer agreement indicated that the Appellant's consideration for transfer of her 50 percent share of the business was that the sister assume all of the liabilities of the business, including the Appellant's share. The Appellant's sister, a witness at the hearing, pointed out that the value of the risk she herself assumed when she accepted the transfer must also be added to the consideration.

ASSETS

File Number: M0328-19
Date of Hearing: October 6, 1993
Presiding Member: Allen

In 1988, the Appellant and her sister started an equal partnership in a retail business. They borrowed heavily to finance the purchase and the operation of the business. Consequently, whatever income was generated was applied against business operating expenses and the Appellant and her sister were never able to make a cash draw against the profits. The Appellant also worked part time as a bus driver and depended on her husband's income for financial support during the time that she was involved in the business.

After her marriage broke down, the Appellant was granted an allowance as a sole-support parent with one dependent child. She was found to be entitled to only \$17 per month, based on an assessment of her income obtained from her income tax return.

Despite the income revealed on the income tax return, the Appellant was not able to take an actual cash draw from the business. She found that, because she was not earning income from the business, she was not in reality earning enough to support herself and her child. She decided to transfer her share of the business to her sister, since she could not afford to keep it until it produced sufficient income to support her and her child.

The Board found that, while the transfer did not involve a cash transaction, it did involve the transfer of one value for another. The Board concluded that the assumption by the sister of liabilities of \$18,000 and the risk involved in taking on a business in a poor economic climate was adequate consideration for the transfer of the Appellant's share of the business. **Appeal granted. Decision of the Director rescinded.** (4 pp; English)

REFERENCES: none ■

HANDICAPPED CHILDREN

Other Index Terms: DISCRETION; FARMS AND FARMERS

File Number: M0405-19
Date of Hearing: November 9, 1993
Presiding Member: Zinger

The Appellant and his spouse received a Handicapped Children's Benefit on behalf of their severely handicapped daughter. The Appellant was a farmer with a gross income of \$200,000. An annual review of the family's income disclosed that the Appellant's declared net income was approximately \$65,000.

The Director found the Appellant ineligible on the grounds of this net income. While nothing in the legislation establishes how much a benefit will be, the Handicapped Children's

MARCH 1994

FAMILY BENEFITS ACT

Benefits Policy and Procedural Guidelines stipulates that the maximum allowable income for a family of seven is \$63,000.

The Appellant testified that, as a self-employed farmer, he had unusual expenses that significantly diminished his net annual income. He had a farm mortgage and farm loans to pay. Moreover, he did not have employer-paid health care benefits for such items as drugs, dental care, and eye glasses. The cost of such items for his family of seven amounted to a substantial financial outlay. Until the cancellation of his allowance, he had drug and dental benefits for his handicapped daughter, plus \$65 per month allowance. The drug related expenses for the handicapped child amounted to \$1,000 or more per year.

The Board agreed that, because he was a self-employed farmer, the Appellant had extraordinary costs not borne by the average person in his income bracket. In the opinion of the Board, the Director fettered his discretion in using the policy guidelines to disqualify the Appellant without considering all the circumstances. Although the Board finds that the Director's policy is generally reasonable, the Board concluded that the Director should have exercised his discretion to grant at least the minimum benefit to the Appellant in this case. This would permit the daughter's extraordinary medical costs to be covered. In making its decision, the Board also took into consideration the fact that the Appellant's income was near the maximum level stipulated in the policy. **Appeal granted. Decision of the Director rescinded.** (5 pp; English)

REFERENCES: O.Reg. 366 s.38(1), s.38(2), s.38(3) ■

LIQUID ASSETS

Other Index Terms: DISCRETION;
JURISDICTIONAL ISSUES

File Number: M0924-01

Date of Hearing: December 16, 1993

Presiding Member: McCormick

The Appellant was diagnosed with AIDS. When his health began to fail, he was forced to close his business. He applied for General Welfare Assistance as an unemployable person and for a Family Benefits allowance as a disabled or permanently unemployable person. He was granted General Welfare Assistance.

He was advised that he was not eligible for Family Benefits because his liquid assets exceeded the allowable maximum. These liquid assets consisted of stocks, one-half of the balance of joint bank accounts, and one-half the value of a Guaranteed Investment Certificate. After receiving the Director's decision, the Appellant sold his stocks and used the money to pay a portion of his personal line of credit. This caused his liquid assets to fall within the acceptable limit. He was not therefore ineligible on this ground.

Was the payment of his personal line of credit a transfer for inadequate consideration or for the purpose of qualifying for an allowance? The Board found that the deposit was not for inadequate consideration as it reduced a legitimate debt of the Appellant. In the opinion of the Board, by using the funds from the sale of stocks to reduce his personal line of credit, the Appellant placed himself in a position of financial need. There was no evidence that the Appellant had been required by the bank to pay the entire amount into the line of credit. The Board concluded that the transfer of assets was made for the purpose of qualifying for assistance.

However, subsection 7(1) of the *Family Benefits Act* confers upon the Director discretion to either find the Appellant ineligible or to reduce his allowance. The Director did not file a submission and the Board has no evidence that the Director exercised this discretion. In the Board's view, the Appellant's action in paying off some of the line of credit was consistent with the way he and his partner handled their financial affairs; it was not part of a grand design to structure his affairs to qualify for assistance. The line of credit was heavily used by the Appellant and his partner to pay living expenses and all available funds were deposited into it. At the time the money from the sale of the stocks was transferred to the line of credit, the account was several thousand dollars above its limit. After the Director's decision, the Appellant and his partner also tried to sell their home and realize funds to pay off the line of credit, even though there is no requirement in the legislation that an applicant's principal residence be sold. In the circumstances, the Board concluded that discretion should be exercised in favour of the Appellant. **Appeal granted. Decision of the Director rescinded.** (8 pp; English)

REFERENCES: *Family Benefits Act* s.7(1), s.18 ■

OVERPAYMENTS

Other Index Terms: DISCRETION;
RECONSIDERATIONS

File Number: L0415-15.R

Date of Hearing: October 28, 1993

Presiding Member: Bradbury

The Appellant had previously received a Family Benefits Allowance, which was discontinued in 1988. She completed an

application at the General Welfare office in 1991. The application stated that she had applied for both Unemployment Insurance and Canada Pension Plan benefits and expected to receive that income in the future. She made a Statutory Declaration on the application that the information was correct. The declaration stated that if she were later found eligible for Family Benefits, the information would be forwarded to the Family Benefits office. The application was, in fact, forwarded and the Appellant began receiving Family Benefits as a disabled person.

She also began receiving Canada Pension Plan benefits, which were paid to her until her next Client Information Update Report was prepared. The Director charged this income as an overpayment.

The Appellant testified that when she applied for General Welfare, she told the worker that she was also applying for CPP. Her income maintenance eligibility record also noted that her doctor was helping her to complete the application form for CPP. She further testified that she and her husband visited the office on various dates to report the CPP income but that they were not able to speak to their worker directly. Finally, she stated that she had sent a CPP verification stub to the office.

The Director submitted that the Appellant deliberately withheld information about her Canada Pension Plan income and that she had many opportunities to report the income. For example, she could have telephoned her worker or sent a letter to the office. As the Appellant did none of these things, the Director submitted that the overpayment was properly created. The Appellant submitted that she had made efforts to provide information to the office and that her efforts were reasonable.

The Board did not agree that information had

been deliberately withheld. There was confusion in this case because the Appellant had been originally directed to the General Welfare office. Because of her medication she was often confused and sometimes contacted the wrong office. She had, for example, mailed the CPP verification stub to the General Welfare office and it had not been forwarded. Moreover, it was difficult for the Appellant to contact her worker by telephone because she suffered from severe hearing loss. The Board was satisfied that, given the Appellant's physical and mental condition, the efforts she made were reasonable in the circumstances. **Appeal granted. Decision of the Director rescinded. An overpayment to the Appellant exists but the discretion afforded by s.17 of the *Family Benefits Act* should be exercised in favour of the Appellant and the overpayment should not be recovered.** (6 pp; English)

REFERENCES: *Family Benefits Act* s.17 ■

DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

Other Index Terms: DISCRETION

File Number: L0901-22

Date of Hearing: September 29, 1993

Presiding Member: Roy

The Appellants were husband and wife. Sometime before her remarriage the wife

received a sum of money from a life insurance policy on her first husband's life, plus a lump sum death benefit payment from the Canada Pension Plan. These amounts were deposited in her bank account. She paid some bills with a portion of this money. The Administrator accepted this as adequate disposal of assets.

However, a large portion of the money remained unaccounted for. The Appellant testified that she had also made loans to her children, although no formal agreements were made for the repayment of these loans. She further testified that her bank account was held jointly with her stepson because he had been the executor of his father's life insurance policy. She confirmed that she often loaned her bank card to her children who got money for her when she could not visit the bank in person.

The Board found that there were in excess of 130 automatic banking machine withdrawals from the account in a short period of time, many of the withdrawals being for sums in excess of \$200. On occasion, more than five withdrawals per day were made. At the hearing, the Appellant testified that she relied on her stepson to handle her financial affairs because he shared the account with her and because he was a successful local businessman. She explained that she had not realized that the money was being depleted so quickly because the bank did not send her a monthly statement.

The issue before the Board was whether the Appellant had disposed of this money for inadequate consideration or in order to qualify for General Welfare Assistance. The Board concluded that she disposed of these assets for inadequate consideration. Because of the Appellant's limited education and inexperience in dealing with financial matters throughout her adult life, she was extremely

unsophisticated in handling her financial affairs. The Board agreed with the Appellant's second husband that one or more of the Appellant's children or stepchildren or both had abused the Appellant's trust and had taken a great deal of money from her account.

Subsection 6(1) of Regulation 537 gives the Administrator discretion over whether to deny or reduce assistance when a person disposes of assets for inadequate consideration. In the Board's opinion, there were extenuating circumstances in this case that made an immediate denial of assistance unreasonable. Although the Appellant was careless with her bank card, there was no evidence to indicate that she deliberately disposed of the money. The theft of money amounted to an involuntary transfer for inadequate consideration.

Moreover, both the Appellant and her second husband were virtually penniless when they applied for assistance and the Board agreed that the second husband should not be penalized for unwise actions taken by his wife before he had even made her acquaintance.

However, in the view of the Board, the Appellant had a responsibility to attempt to recover, through the legal process, both the stolen money and the money loaned to her children. The Board ordered that the continuing provision of assistance be conditional upon this. **Appeal granted in part. Decision of the Administrator rescinded in part.** (8 pp; English)

REFERENCES: O.Reg. 537 s.6(1) ■

AVAILABLE FINANCIAL RESOURCE

Other Index Terms: CREDIBILITY;
SUPPORT OR MAINTENANCE
PAYMENTS

File Number: M0314-05

Date of Hearing: August 18, 1993

Presiding Member: Campbell

The issue in this case was whether the Administrator should have exercised discretion under section 4(3)(b) of Regulation 537 to waive the requirement to pursue support from the father of the Appellant's third child because of concern about the well being of the mother or child.

The Appellant came to Canada at age 17 and later gave birth to two children. Her marriage was stormy and her husband abusive. Divorce proceedings began in 1991. The Appellant was at first granted interim custody of the children, then interim custody was awarded to her husband. She applied for General Welfare Assistance when she lost her job because her work permit was cancelled. It was her belief that she lost her permit because her husband cancelled his sponsorship of her when their marriage broke down.

When the Appellant applied for assistance, she was 22 years old and pregnant with her third child. She was granted assistance. Later, the Appellant's immigration status was questioned and she was asked the identity of the child's father. She declared that the child's father was her former employer. The significance of the declaration of paternity was not explained to her at the time. She was not aware that, to continue to be eligible for assistance, she would be expected to pursue support from the child's father directly or through the courts.

The Appellant's file was transferred to another office. Her new worker was of the opinion that there was no valid reason why the Appellant should fail to pursue support from the child's father. When, under pressure from the worker, the Appellant called him to discuss the notion of support, he told her that

MARCH 1994

GENERAL WELFARE ASSISTANCE ACT

his wife could not have children and that he would rather support the child by seeking custody and having the child live with him. The Appellant's fear that she would lose her third child was not accepted by the Administrator as a valid reason for failing to pursue support from the child's father.

The Board accepted that the Appellant's history of difficult experiences with family court proceedings, her uncertainties regarding her immigration status and having a young baby to care for had made her life very stressful. In the view of the Board, the Appellant required sometime to consider the implications of pursuing support of the third child through the courts, particularly as she was continuing to try to get custody of her other children. The Board accepts that under s.4(3)(b) of Regulation 537, the Administrator has the discretion to waive the requirement to pursue support in circumstances where there is concern about the well-being of the mother or child. The Board found that, at the time in question, it was not in the best interests of this mother to be forced to pursue support. The Board, however, also recognizes that waiving the requirement to pursue support is not a long-term solution. In the Board's view, it would be reasonable for the Administrator to re-open the question at a later date. **Appeal granted. Decision of the Administrator rescinded.** (6 pp; English)

REFERENCES: O.Reg. 537 s.4(3)(b) ■

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Other Index Terms: AGE

File Number: L0820-15

Date of Hearing: October 12, 1993

Presiding Member: McCormick

The 20-year-old unemployed but employable Appellant lived at home with his parents. He

was not married and had no dependants. His parents' source of income was from Workers' Compensation benefits, a Canada Pension Plan disability pension, and a Family Benefits allowance. The Appellant was removed from the Family Benefits allowance because he was no longer considered a "dependent child" within the meaning of the legislation. The Appellant then applied for General Welfare Assistance and was found ineligible because of his age and living circumstances.

The Appellant clearly was not eligible under the wording of the legislation. The primary eligibility test for welfare is set out in subsection 12(1) of Regulation 537 which defines a person who can receive assistance as either a "single person" or a "head of a family". The Appellant was not a "head of a family" because he had no dependants, and he was excluded from the definition of a "single person" because of his age. As an employable person under 21 years of age, the Appellant was potentially eligible for assistance only if he left home.

The Board found that s.1(1)(n)(b) of Regulation 537 discriminated against the Appellant on the basis of his age, contrary to s.15(1) of the *Charter of Rights and Freedoms*. Employable persons under 21 living at home were treated differently than persons over 21 in the same circumstances. This difference in treatment had the effect of withholding a benefit to the Appellant. The Board further found that this discrimination was not justified under section 1 of the *Charter of Rights and Freedoms*.

Pursuant to the Board's jurisdiction as an administrative tribunal with regard to Charter issues, the Board treated s.1(1)(n)(b) as being of no force and effect in the circumstances of the Appellant's case. **Appeal granted. Decision of the Administrator rescinded.** (6 pp; English)

REFERENCES: *Canadian Charter of Rights and Freedoms* s.1, s.15(1); O.Reg. 537 s.1(1)(n)(b) ■

FAILURE TO PROVIDE INFORMATION

Other Index Terms: ADJOURNMENTS; CREDIBILITY

File Number: L1108-04

Date of Hearing: June 1, 1993

Presiding Member: Zinger

At the hearing, counsel for the Appellant requested an adjournment, stating an inability to properly prepare her case because she had not received the Administrator's submission and did not get disclosure of the Appellant's file until a late date. In the view of the Board, if, for good reason, one party cannot properly put its case before the Board on the day set for the hearing, then natural justice requires that the party should be granted an adjournment. In this case, there was a three-month period between the time the Appellant retained the services of the legal clinic and filed his Form 1.

The substantive issue in this case was a failure to provide information, which was clearly stated on the Form 1. The Form 1 also gave a detailed itemization of the information that had been requested. Therefore, the Board found that the Appellant's counsel had adequate information regarding the case they had to meet for the Appellant. Since there was no good reason for delaying the hearing, no adjournment was granted.

In cross-examining the Appellant, counsel for the Administrator attempted to discredit the Appellant's testimony by showing a history of false declarations that he had made. This evidence attempted to demonstrate that the Appellant had lied on an affidavit and that he

had failed to make a full declaration to the department respecting the number of his credit cards, the number of his passports, and the number of visits he had made outside the province. The Administrator also had information that the Appellant had declared himself to be self-employed with a yearly income of \$35,000. The Appellant was also asked to provide proof of legal guardianship for his cousin who had come to live with him and who had been added to the Appellant's budget.

Regarding the issue of guardianship, the Appellant supplied a school document that listed himself as his cousin's guardian. The Board did not recognize this document as being confirmation of the Appellant's legal relationship to his cousin. Rather, the evidence indicated that the cousin had a refugee claim and had been sent to Canada by her parents, who asked the Appellant to look after her. The immigration process required that she have a guardian, so the Appellant went to the border to assume responsibility for her. The Board reasoned that the Appellant could not attempt to prove that he was his cousin's legal guardian if this were not the case. The reason the Administrator insisted on proof of legal guardianship rather than simply trying to verify that the Appellant was acting in a parental role for his cousin was not made clear to the Board. The Board concluded that the Appellant had made a reasonable effort to provide the required information.

The Appellant had two passports with different expiry dates. The Administrator requested passport A. The Appellant stated that the passport was with an embassy and wrote to the embassy requesting proof of this. Embassy officials reported that a search was made for this passport and they did not have it. In this matter, the Administrator had asked the Appellant to get verification that the

MARCH 1994

GENERAL WELFARE ASSISTANCE ACT

embassy had his passport. Because the Appellant took the action that was requested, the Board found that he had made a reasonable effort to supply the required information.

From the evidence, the Board found that the Appellant did not declare all of his bank accounts and credit cards. He provided some bank account information, but when asked to provide a statement of activity for a certain account he provided only the current balance. He stated that he had lost the old bank book. Counsel for the Appellant submitted that the Appellant did not know how to obtain the complete information. The Board was not convinced of this since the Appellant had proved himself capable of negotiating several bank accounts, performing credit card transactions, registering and attempting to operate a number of businesses, and doing a significant amount of foreign travel. Moreover, an interpreter was always present when these various requests were made. The Board found that the Appellant did not make a reasonable effort to supply the bank account information.

The Appellant's credit card statements showed two purchases totalling approximately \$1,400 that had been made in another country. From the evidence at the hearing, the Board found that the Appellant had lied to the Administrator about previous travel; therefore, the Board found it reasonable for the department to try to determine whether the Appellant had been ineligible for assistance while travelling outside the country. The Appellant testified that he had not made these two purchases personally but had allowed a relative in another country to make these purchases on the Appellant's card with the understanding that this person's relative in Canada would repay the Appellant. The Administrator had asked the Appellant for some proof of who had signed for these

purchases. The Appellant testified that he had no record of the transaction as it had been made by telephone and that he was unable to contact his relative who had returned to another country where there was no phone service. In the view of the Board, there was no evidence that the Appellant had taken any steps to provide this information.

The Administrator charged that the Appellant was self-employed because he had made this claim on an application form for renting an apartment. The Appellant testified that he had deliberately lied on this form in order to obtain the apartment, as many landlords will not rent to people on social assistance. Although the Board does not condone this falsehood, the Board was of the view that circumstances may exist where a person might feel no other alternative than to tell a falsehood in order to meet the basic necessities of life.

Pertaining to the matter of the Appellant's possible self-employment, he testified that he had registered a business but had never operated the business or received any income from it, and when asked to de-register it he had done so immediately. He also provided income tax returns to support this position. The Board accepted this testimony and concluded that the Appellant had made a reasonable effort to supply the information required by the Administrator.

The Board concluded that because the Appellant had not made a reasonable effort to provide information about the purchases in the other country and about one of his bank accounts, and because this information was needed to determine his level of assets and his eligibility when travelling outside the province, the Appellant was not eligible for assistance at the time of the Administrator's decision. **Appeal denied. Decision of the Administrator affirmed.** (13 pp; English)

REFERENCES: *General Welfare Assistance Act* s.10(2)(b), *Statutory Powers Procedure Act* s.21 ■

FAILURE TO PROVIDE INFORMATION

Other Index Terms: CREDIBILITY

File Number: M0423-25

Date of Hearing: September 21, 1993

Presiding Member: Cardinal

The Appellant received General Welfare Assistance from August 1991 until April 1993. The following month, her cheque was held pending receipt of the name of and information about a co-resident. At the hearing, the Administrator's spokesperson testified that it was the Administrator's opinion that the Appellant's entitlement was too small to pay for her rent, hydro, and telephone and that if she were receiving help from a co-resident or from her family, she must inform the Administrator so that the income received could be computed. The Administrator's spokesperson added that the Appellant had been asked to provide this information nine times.

The Appellant testified that she did not have a co-resident and that her lifestyle was very frugal. She sewed her own clothing and stretched out food and other provisions. She belonged to a group with whom she shared meals. On special occasions her sisters sent her parcels of toiletries, food staples, or small gifts of money, which she used to pay expenses such as hydro and telephone. The Appellant also testified that she had received an income tax refund and several Goods and Services Tax rebates, which she had also saved to cover her expenses.

She further testified that in 1993 she had found someone who was willing to share her

apartment and who would pay \$175 per month to do so. However, she stated that her caseworker had told her that she had to find someone who would pay half of everything. Since everything in the apartment belonged to the Appellant she thought this was unreasonable and declined to accept the co-resident.

The Board found that, while the Appellant had made arrangements to find a co-resident, this person did not come to live with her. Therefore the Appellant's assistance should not have been cancelled for a failure to provide the co-resident's name. Moreover, the Board accepted her evidence that she made up the financial shortfall with income tax returns, GST rebates, and occasional gifts of small value. **Appeal granted. Decision of the Administrator rescinded.** (7 pp English; 8 pp French)

REFERENCES: none ■

OVERPAYMENTS

Other Index Terms: FINANCIAL HARDSHIP; WAGES, SALARIES, AND CASUAL EARNINGS

File Number: M0128-21

Date of Hearing: August 5, 1993

Presiding Member: Campbell

While providing evidence for a court case against him, the Appellant revealed that he had delivered flyers, delivered pizzas, and shovelled snow for a month-long period. He was receiving General Welfare Assistance during this time and had not declared any employment to the welfare office.

An overpayment of \$1,231 was levied against the Appellant on the grounds that he had refused employment and failed to take

MARCH 1994

GENERAL WELFARE ASSISTANCE ACT

advantage of financial resources available to him. Therefore, according to the Administrator's submission, the Appellant was not entitled to assistance for a one-month period, for which he had received \$1,231.

The Appellant described the work that he had done as casual employment and that he did not think of reporting the small amount of money that he had made. He also testified that he thought he did not have to report up to \$150 per month, as this amount would not be deducted from his entitlement under the provisions of S.T.E.P., as he mistakenly understood them. At the hearing, the Appellant testified that he had stopped delivering pizza because his driver's licence was suspended for 30 days and that he had never received any money for snow shovelling. He had previously borrowed money from the person for whom he shovelled snow and could not pay it back, so he offered work in exchange for repayment. As no money was exchanged, he did not realize that the welfare office might consider this loan repayment to be income. Moreover, he had not been offered full-time employment but a mere four to six hours of more snow shovelling, and at the time he was not aware that refusal of any casual employment jeopardized his eligibility for welfare. Had he known this, he testified that he would have accepted the work.

The Administrator argued that a refusal of employment constituted a failure to pursue a resource. The Board did not consider that the circumstances of losing employment by unexpectedly losing a certificate that was required for the work (e.g. a driver's licence) is one of the types of actions described in s.4(2d) and (2e).

The Appellant accepted that he had incurred an overpayment, but considered the amount of \$1,231 to be unreasonable. According to the

Board's calculations the amount of unreported chargeable earnings, taking into account the S.T.E.P. allowable earnings, totalled \$149.

In the view of the Board, s.4(2d) and (2e) of Regulation 537 emphasize that in circumstances where there was a refusal of employment, there is also an option to merely reduce the amount of assistance as opposed to outright denial of assistance if the latter "would be unreasonably harsh in the circumstances". Since there is no legislative definition of what "unreasonably harsh in the circumstances" means, the Board concluded that this phrase would reasonably include imposing a penalty that seems out of proportion to the scale of the infraction. In this case, the only evidence of refusal of work was a refusal of four to six hours of work that would have brought in a total of \$48. The Board therefore directed that the reduction in entitlement for the one-month period under discussion be limited to \$149, the amount of chargeable income.

The Appellant testified that he was experiencing financial hardship because of the rate of recovery of the overpayment. He had three young children, paid \$600 per month in rent, \$143 in hydro, \$300 to \$500 per month in groceries, and had the additional expense of operating his car. Relocating to a new community so that the Appellant could attend school had resulted in a loss of their subsidized housing and in higher living costs. In the Board's view, the financial pressures on the Appellant were severe enough to order that the rate of recovery be reduced to 5 percent of the Appellant's entitlement. **Appeal granted in part. Decision of the Administrator rescinded in part.** (9 pp; English).

REFERENCES: O.Reg. 537 s.4(2d), s.4(2e), s.4(3)(a), s.4(3)(b) ■

OVERPAYMENTS

Other Index Terms: EXTENSION OF TIME; JURISDICTIONAL ISSUES

File Number: M0318-22

Date of Hearing: August 25, 1993

Presiding Member: Campbell

The issue in this appeal was whether the Administrator correctly exercised his discretion to deny the Appellant assistance on the grounds that she had resigned from her job without reasonable cause in the month prior to seeking assistance.

The Administrator issued General Welfare Assistance for the month of February 1993. After receiving information from the employer that the Appellant had been dismissed, the Administrator later considered that the Appellant was not entitled to this assistance.

The Appellant had been employed part time. She told her worker that she had left her work because they had not offered her enough hours. The information from her former employer suggested that the Appellant had not been available to take work that was offered to her, that she had refused to fill in for other employees and had therefore been dismissed. In March, the Appellant had contacted her worker and indicated that she no longer required assistance because she had found work. She continued to receive assistance until March 31.

Before addressing the substantive issue, the Board turned to the question of whether the Board had jurisdiction to deal with this appeal, as the Appellant was no longer receiving assistance at the time of the hearing and her alleged overpayment could not be recovered through a reduction in her assistance.

In *Reichstein v. Director, Income Maintenance* and *Taylor v. Director of Income Maintenance Branch of Ministry of Community and Social Services*, the Divisional Court has said that, in certain circumstances, the Board has no jurisdiction to deal with overpayment issues under the *Family Benefits Act* when the appellant is no longer receiving benefits.

In this panel's view, these decisions were distinguishable from the present case for several reasons. First, *Reichstein* and *Taylor* both deal with Family Benefits matters while this case deals with General Welfare Assistance. In the view of the Board, the wording of subsection 11(2) of the *General Welfare Assistance Act*, which sets out the type of decisions that can be appealed to the Board, is much broader than the corresponding section of the *Family Benefits Act*.

Moreover, the facts in this case also differed. In the *Reichstein* case, the appellant had voluntarily withdrawn from the Family Benefits program sometime before the overpayment was assessed. In the present case, the overpayment was levied and recovery had begun while the Appellant was still in receipt of assistance.

Finally, there was no clear reason why the Board did not have jurisdiction. People who receive social assistance have little opportunity to seek relief by taking legal action, and, in the opinion of the Board, an inexpensive and accessible avenue of appeal should not be cut off unless the Board clearly lacks jurisdiction. The Board, however, recognized that other panels have refused to hear similar cases because those panels felt bound by *Reichstein*.

Regarding the substantive issue, the Board noted that there was no documentary evidence

MARCH 1994

GENERAL WELFARE ASSISTANCE ACT

to substantiate the claims of the Appellant's former employer; nor did the welfare worker who had contacted the employer attend the hearing. The Board therefore preferred the sworn testimony of the Appellant. She testified that she had refused work only in the case of illness. She further testified that the work that she had left was part time and on call, which left her little opportunity to look for the more secure full-time employment that she needed and eventually found.

The Board accepted that resignation from part-time on call work differs from resignation from full-time steady employment. The Board concluded that the Appellant resigned in order to put full-time effort into finding full-time steady employment and that this was reasonable cause. **Appeal granted. Decision of the Administrator rescinded.** (7 pp; English)

REFERENCES: *General Welfare Assistance Act* s.11(2); O.Reg. 537 s.3(2)(d); *Reichstein v. Director, Income Maintenance*, July 14, 1982, Div. Ct. (unreported), *Taylor v. Director of Income Maintenance Branch of Ministry of Community and Social Services* November 20, 1990, Div. Ct. (unreported); "reasonable cause" ■

RECONSIDERATIONS

Other Index Terms: ABSENT FROM ONTARIO; JOB SEARCH

File Number: L0129-13.R

Date of Hearing: October 14, 1993

Presiding Member: Bradbury

The issue before the Board was whether or not the Appellant could comply with the requirements of section 3(1)(b)(i) and (ii) of Regulation 441 while she was temporarily away from Canada for a two-week period. The legislation requires that an employable

person must be prepared to take any full-time, part-time or casual employment of which he or she is physically capable and that the person must be making reasonable efforts to secure such employment.

The Appellant was notified that her sister was ill in another country and that the family requested that the Appellant return to help her sister. Evidence, in the form of family letters and a letter from the sister's physician, was submitted and accepted by the Board. The Appellant notified her case worker of the proposed absence for a two-week period. She was told that she would not be eligible for General Welfare Assistance if she left Ontario for this period of time.

Her boyfriend loaned her the money for the plane fare and the Appellant bought a return ticket. According to her evidence, she was not on vacation for this period; rather, she was responding to a family crisis.

The Appellant testified that, while she was away, she made serious attempts to obtain temporary work by applying for sales clerk positions, cleaning positions, and factory work. She responded to advertisements, she made telephone calls, and she applied in person. Moreover, she applied in writing for several nanny positions that were available in Ontario. Nevertheless, the Appellant was unable to obtain work while she was absent.

The Administrator submitted that the legislation requires that a person must be within the jurisdiction in order to make a legitimate job search. In this case, the Appellant would not have been available for work had she been offered work in Ontario; therefore, she could not be said to be meeting the requirements of the legislation. In the Administrator's opinion, the Appellant's reason for being outside the jurisdiction was not relevant to the issue.

In the Board's view, the effect of the Administrator's position is that people receiving welfare are potentially unable to respond to a family crisis without jeopardizing their eligibility. In this case, the Board was satisfied that the Appellant had met the requirements of the legislation.

The Board also noted that the *Family Benefits Act* specifically states that a benefit may be suspended or cancelled when a recipient is absent from Ontario. While there is no corresponding section in the *General Welfare Assistance Act*, the *FBA Policy and Procedural Guidelines Manual* states that the policy intent of the FBA legislation is to ensure that benefits are not interrupted during a temporary absence. In the view of the Board, it is reasonable to assume that people should be able to respond to a legitimate crisis whether they are receiving Family Benefits or General Welfare.

Finally, the Board noted that the Administrator had a discretion in the circumstances of this case to not suspend the Appellant's assistance while she was away. **Appeal granted. Original decision of the Administrator rescinded.** (5 pp; English)

REFERENCES: O.Reg. 441 s.3(1)(b), s.3(3)(a) ■

S.T.E.P.

Other Index Terms: DISCRETION

File Number: M0416-15

Date of Hearing: September 8, 1993

Presiding Member: Morrish

The Appellant had been receiving General Welfare Assistance for himself and his family from 1990. His two children attended daycare. The Appellant then began to attend an ESL

course in the mornings and continued to look for employment during the remainder of the day. His spouse worked part time in a pharmacy. Because of this employment, the Appellant was required to pay \$1.83 per child per day for child care. He requested that this amount be exempt from the charge for his spouse's income.

The Administrator determined that the Appellant was no longer eligible for the \$40 per month child care exemption under the S.T.E.P. The Administrator's submission indicated that according to the S.T.E.P. policy, daycare expenses are allowed if:

1. One parent is employed full-time.
2. The spouse is actively seeking employment and is not attending school in a non-paid training program, high school or ESL.

The Board found that the Appellant's situation was most analogous to that described in O.Reg. 537 s.15(2)(1)(iv)(C). The Appellant was a recipient who was head of a family. His spouse was employed; he was enrolled in an ESL course and seeking work. As such, he was unable to provide child care.

In the view of the Board, the Administrator's policy guidelines imposed additional criteria that were beyond those in the legislation. These criteria had the effect of fettering the Administrator's discretion, as they restricted certain categories of recipients rather than considering each recipient's circumstances on an individual basis. The Board ordered that the Appellant's child care expenses be reimbursed. **Appeal granted. Decision of the Administrator rescinded.** (4 pp; English)

REFERENCES: O.Reg. 537 s.15(2)(1)(iv)C ■

MARCH 1994

GENERAL WELFARE ASSISTANCE ACT

SELF-EMPLOYED

File Number: L1022-15

Date of Hearing: August 29, 1993

Presiding Member: Martin

The Appellant worked in the logging industry, which necessitated working in remote locations. He was working in such an area when a heavy snow fall caused him to cease work in what he believed were conditions that would jeopardize his safety. When the Appellant applied for General Welfare Assistance, the Administrator determined that the Appellant was self-employed and, therefore, was not eligible. The Administrator's decision was based on the fact that the Appellant had filed an income tax return in which he declared himself to be self-employed and on tally sheets showing the number of cords of wood cut; these were used by the logging company to determine payment to the Appellant.

In the opinion of the Board, in this instance it was not sufficient to look only at the Appellant's definition of himself as being self-employed. It was clear to the Board that the relationship between the logging company and the Appellant was not that of self-employment on the part of the Appellant. In coming to this conclusion, the Board applied a number of legal tests.

First, logging in the "timber limit" area could occur only with a special permit; a "timber limit" is an area set aside by the Ministry of Natural Resources where a specific company can carry out logging operations with a special permit. The Appellant did not have such a permit. Second, there was no evidence that the Appellant had control over what work was to be done, where it was to be done, or how it was to be done. Third, the Appellant contributed to the income of the logging company through his work, whereas self-

employment revolves around profit or loss. The Appellant in this case was not in a position to develop a profit for himself through his work. Moreover, the Appellant was paid as any employee, with the exception that his pay was not contingent on hours worked but rather on the amount of wood cut for the company. Finally, there was no evidence that the Appellant had tendered a bid to secure a contract for work in order to work as a subcontractor for the logging company.

The Board noted that the Appellant did not have Unemployment Insurance, Canada Pension, or income tax deducted from his pay and that these deductions are traditionally seen as evidence of employment. In the view of the Board, it is of benefit to the employer not to make these deductions as it requires additional paperwork and, in some cases, a financial contribution by the employer. In this case, the Appellant had no control over whether or not deductions were made from his pay. **Appeal granted. Decision of the Administrator rescinded.** (9 pp; English)

REFERENCES: O.Reg. 537 s.1(4a) ■

VISITORS

File Number: M0523-01

Date of Hearing: October 13, 1993

Presiding Member: Bradbury

The issue before the Board was whether the Appellant was ineligible for General Welfare Assistance under subsection 7(7) of Regulation 537 because his spouse had no status in Canada.

The Appellant was a Canadian citizen who had lived in Canada all his life. He married a woman from another country who had come to Canada in 1989 as a visitor. When her visitor's visa expired, she remained in Canada

but did not renew her visa or make an application for landed immigrant status.

After the birth of their child, the couple began the process of having the wife become a landed immigrant. Their lawyer advised them to apply on humanitarian and compassionate grounds and that a \$450 application fee would be payable. Both husband and wife testified that the only thing preventing them from applying was the fact that they did not have enough money for the application fee.

The Appellant applied for assistance on behalf of himself and his family as an employable person who was looking for work. He was denied assistance on the grounds that his spouse was not a resident in Canada.

The Board concluded that the Appellant was clearly a resident in the municipality. On the basis of the Appellant's evidence, the Board was also satisfied that he was looking for work but was unable to obtain employment. Therefore, the Appellant was a person in need in accordance with O.Reg. 537 s.1(4)(a). The Board also concluded that he was willing to undertake any employment and that he was making reasonable efforts to obtain employment; he was therefore eligible under subsection 7(1) of the Act.

The Board further found that the Appellant was the head of a family whose child was a dependent child and whose wife was a dependent adult. He was therefore eligible under O.Reg. 537 s.1(1)(a). On the basis of the evidence before it, the Board concluded that the Appellant's wife was the only adult able to care for the child in the household as her husband was looking for work on a daily basis and there was no alternative child care available. She was not, therefore, required to look for employment. The Board concluded that she was therefore eligible for assistance. In this connection, the Board also noted that

nothing in the legislation imposes a residency requirement on a dependent adult. Residence in the municipality is required only of the Appellant.

The Administrator determined that the spouse was disqualified under O.Reg. 537 s.7(7)(c) and that this disqualified the entire family. In determining whether the spouse was a "visitor", the Board considered the definition of a visitor under the *Immigration Act* (Canada), which also defines when someone ceases to be a "visitor". In the view of the Board, she clearly fell into the category of someone who had ceased to be a visitor because she had remained longer than the authorized period. The Board concluded, therefore, that s.7(7)(c) did not disqualify the Appellant's spouse. Furthermore, s.7(6) did not disqualify the Appellant because that section refers to people in need under s.1(4)(b) of O.Reg. 537, that is, a head of a family whose spouse is absent. The Board concluded that the Administrator was not correct in denying assistance.

The Board further considered whether this finding was in accordance with the purpose of the legislation or whether it would open the door to all non-status appellants contrary to the intention of s. 7(7). In the view of the Board, other non-status appellants must still meet the Regulation's section 4 requirements for dependent adults in order to qualify, as the Appellant's spouse did in this case. As well, it cannot be said that the purpose of the *General Welfare Assistance Act* is to enforce the *Immigration Act*. The finding in this case is in keeping with the overall purpose of the General Welfare legislation, which is to provide assistance to people in need who meet the eligibility requirements. **Appeal granted. Decision of the Administrator rescinded.** (7 pp; English)

REFERENCES: *General Welfare Assistance*

GENERAL WELFARE ASSISTANCE ACT

Act s.7(1); *Immigration Act* s.26(1), s.26(2), s.27(e); O.Reg. 537 s.7(6), s.7(7)(c); "visitor" ■

PART III

DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Other Index Terms: ORDER IN COUNCIL

File Number: K0215-19

Date of Hearing: July 27, 1993

Presiding Member: McCormick

In an earlier decision, the Board affirmed the Director's decision that the Appellant was not eligible for the funding of tuition, books, and transportation for his college program as his circumstances did not fit into one of the defined classes of eligibility.

The Appellant was recognized by the Director as a disabled person and was receiving a maintenance allowance under the *Vocational Rehabilitation Services Act*. The Director had approved the Appellant's course of study at a college but the college had not yet been approved as a college eligible to provide financial assistance under the Ontario Student Assistance Program.

The Board granted the Appellant's request for an opportunity to challenge the legislation

pursuant to the *Canadian Charter of Rights and Freedoms*. The issue before the Board was whether such a limitation on eligibility violated sections 7 or 15(1) of the Charter.

The Appellant's counsel submitted that the Appellant's right to liberty had been deprived because the right to liberty includes a right to the opportunity to make a living. In support of this position, counsel relied on the words of Southin, J. in the case *Re: Abbotsford Taxi Ltd. and Motor Carrier Commission* (1985), 23 D.L.R. (4th) 365 (British Columbia Supreme Court).

The Board was unable to accept this submission because, in the Board's view, it stretches the meaning of "liberty" far beyond any judicially accepted definition in Canada and especially in Ontario. In Ontario courts, the definition of the word "liberty" has been confined to personal freedom and the courts have rejected any economic component. The Board concluded that the Appellant's right to "liberty" does not include the right to study.

The Board applied the tests set forth in *Andrews v. Law Society of British Columbia* (1989), 56 D.L.R. (4th) in assessing whether s.15(1) of the Charter had been violated in the present case. The Board was satisfied that O.Reg. 943 s.6(a) does not discriminate between disabled and non-disabled persons. The difference in treatment between the Appellant and those disabled persons who qualify for funding under this subsection is a result of the fact that the Appellant's chosen college had not yet been accepted for OSAP funding; there was no evidence that the Appellant's choice of college was based on his particular disability.

The Appellant's counsel made a strong case that the Appellant was unfairly treated simply because the college was a new one that had yet to qualify for funding. The evidence

before the Board was that only two or three disabled persons had been similarly found ineligible for funding in the past. In the Board's view, the Appellant's circumstances were exceptional and not anticipated by the legislation. The Board therefore suggested that the Director recommend an Order in Council.

Appeal denied. Decision of the Director affirmed. (9 pp; English)

REFERENCES: *Canadian Charter of Rights and Freedoms* s. 7, s.15(1); O.Reg. 943 s.6(a)(1), s.6(a)(2); *Re Abbotsford Taxi Ltd. and Motor Carrier Commission* (1985), 23 D.L.R. (4th) 365, *Cosyns v. Canada (Attorney General)* (1992), 7 O.R. (3d) 641, *Andrews v. Law Society of British Columbia* (1989), 56 D.L.R. (4th); "liberty" ■

DISABLED PERSONS

File Number: L0623-11

Date of Hearing: November 16, 1993

Presiding Member: Morrish

The Appellant appealed to the Board because Vocational Rehabilitation Services had refused to fund his participation in a trucking license course. The refusal was made primarily because the Appellant could not be bonded, because of a previous criminal conviction. Research carried out by the Director indicated that not being bonded significantly reduced his employment potential. Permission to take the course was also refused because employment as a truck driver was not suitable given the Appellant's back condition.

Regarding the first issue, the Appellant provided sufficient evidence to show that the fact that he could not be bonded did not present a significant barrier to employment in his chosen field. He explained that he would seek employment doing short hauls for which

bonding was not required and explained that he had considerable previous experience doing this. He also demonstrated that there were job openings in this field. The Board concluded that the Appellant should not be precluded from participating in the trucking license course because he was not bondable.

However, in the Appellant's case, medical evidence had established that he suffered from degenerative disc disease and therefore had a disability which qualified him for VRS. But at the hearing the Appellant testified that he did not have this disease and had, in fact, been advised by a surgeon that he had never suffered from this condition. Instead, he suffered from a different condition that had been effectively treated by nerve block therapy. As a result, the basis for the Appellant's original eligibility for VRS was undermined by his own testimony. The Board was unable to grant the VRS training program request because the Appellant was not a disabled person. **Appeal denied. Decision of the Director affirmed.** (5 pp; English)

REFERENCES: *Vocational Rehabilitation Services Act* s.1(b), s.5(a), s.6 ■

CUMULATIVE INDEX

This index includes cases published in Volume 3:1, 3:2, 3:3, and 3:4 of
SUMMARIES OF DECISIONS

PART I: DECISIONS UNDER THE FAMILY BENEFITS ACT

APPLICATIONS

L0420-16
Volume 3:1 MAY 1993 p.5

ASSETS

M0105-35
Volume 3:3 NOV 1993 p.7
M0328-19
Volume 3:4 MAR 1994 p.5

ASSIGNMENT

J0313-15R
Volume 3:1 MAY 1993 p.5

AVAILABLE FINANCIAL RESOURCE

J0510-09
Volume 3:3 NOV 1993 p.10
K0707-14
Volume 3:3 NOV 1993 p.5
L0602-17
Volume 3:1 MAY 1993 p.5

BENEFICIARIES

J1002-03R.1
Volume 3:2 JUL 1993 p.11

CO-RESIDENCE

L0304-14
Volume 3:3 NOV 1993 p.6

CREDIBILITY

K1027-32
Volume 3:1 MAY 1993 p.9

K1226-12

Volume 3:2 JUL 1993 p.15

L1222-28

Volume 3:3 NOV 1993 p.9

M0105-35

Volume 3:3 NOV 1993 p.7

DAMAGES OR COMPENSATION FOR PAIN AND SUFFERING

K0715-32
Volume 3:1 MAY 1993 p.7

DEPENDENT CHILD OR CHILDREN

J1002-03R.1
Volume 3:2 JUL 1993 p.11

L0212-01

Volume 3:3 NOV 1993 p.8

L0524-26

Volume 3:2 JUL 1993 p.6

L0629-19

Volume 3:2 JUL 1993 p.7

DISCRETION

K0820-01

Volume 3:1 MAY 1993 p.6

L0415-15.R

Volume 3:4 MAR 1994 p.7

L0602-17

Volume 3:1 MAY 1993 p.5

L0722-21

Volume 3:2 JUL 1993 p.5

M0405-19

Volume 3:4 MAR 1994 p.5

M0924-01

Volume 3:4 MAR 1994 p.6

FAILURE TO PROVIDE INFORMATION

J0510-09
Volume 3:3 NOV 1993 p.10
L0229-07
Volume 3:2 JUL 1993 p.9
L1222-28
Volume 3:3 NOV 1993 p.9

FAIRNESS

J0510-09
Volume 3:3 NOV 1993 p.10

FARMS AND FARMERS

M0405-19
Volume 3:4 MAR 1994 p.5

FOSTER PARENTS AND CHILDREN

K0820-01
Volume 3:1 MAY 1993 p.6

FRAUD

M0105-35
Volume 3:3 NOV 1993 p.7

HANDICAPPED CHILDREN

L0722-21
Volume 3:2 JUL 1993 p.5
M0405-19
Volume 3:4 MAR 1994 p.5

HOMES, HOSPITALS, AND INSTITUTIONS,
PATIENT OR RESIDENT IN

K0715-32
Volume 3:1 MAY 1993 p.7

INCOME

K1111-12
Volume 3:2 JUL 1993 p.12
L0103-02
Volume 3:3 NOV 1993 p.13
M0105-35
Volume 3:3 NOV 1993 p.7

INSURANCE

J0313-15R
Volume 3:1 MAY 1993 p.8
K0715-32
Volume 3:1 MAY 1993 p.7
L0211-20
Volume 3:3 NOV 1993 p.12

JOINT CUSTODY

L0524-26
Volume 3:2 JUL 1993 p.6
L0629-19
Volume 3:2 JUL 1993 p.7

JURISDICTIONAL ISSUES

J1002-03R.2
Volume 3:2 JUL 1993 p.14
L0629-19
Volume 3:2 JUL 1993 p.7
M0924-01
Volume 3:4 MAR 1994 p.6

LIQUID ASSETS

K1027-04
Volume 3:2 JUL 1993 p.10
L0211-20
Volume 3:3 NOV 1993 p.12
L0229-07
Volume 3:2 JUL 1993 p.9
L1222-28
Volume 3:3 NOV 1993 p.9
M0924-01
Volume 3:4 MAR 1994 p.6

ONTARIO MOTORIST PROTECTION PLAN

J0313-15R
Volume 3:1 MAY 1993 p.8

OVERPAYMENTS

J0313-15R
Volume 3:1 MAY 1993 p.8
K1027-04
Volume 3:2 JUL 1993 p.10
L0415-15.R
Volume 3:4 MAR 1994 p.7

PARTIES

J1002-03R.1
Volume 3:2 JUL 1993 p.11

PAYMENTS RECEIVED

K0715-32
Volume 3:1 MAY 1993 p.7
K1111-12
Volume 3:2 JUL 1993 p.12
L0103-02
Volume 3:3 NOV 1993 p.13

MARCH 1994

| | | | | | | |
|---|----------|------|---|------------|----------|------|
| PROCEDURES | | | | Volume 3:3 | NOV 1993 | p.14 |
| J1002-03R.1 | | | | K0117-06 | | |
| Volume 3:2 | JUL 1993 | p.11 | | Volume 3:1 | MAY 1993 | p.10 |
| PUTATIVE FATHER | | | | L0820-15 | | |
| J0510-09 | | | | Volume 3:4 | MAR 1994 | p.10 |
| Volume 3:3 | NOV 1993 | p.10 | APPLICATIONS | | | |
| K0707-14 | | | K0513-08 | | | |
| Volume 3:3 | NOV 1993 | p.5 | Volume 3:1 | MAY 1993 | p.13 | |
| RECONSIDERATIONS | | | ASSETS | | | |
| J1002-03R.1 | | | L0901-22 | | | |
| Volume 3:2 | JUL 1993 | p.11 | Volume 3:4 | MAR 1994 | p.8 | |
| J1002-03R.2 | | | ASSIGNMENT | | | |
| Volume 3:2 | JUL 1993 | p.14 | L1109-06 | | | |
| L0415-15.R | | | Volume 3:3 | NOV 1993 | p.14 | |
| Volume 3:4 | MAR 1994 | p.7 | AVAILABLE FINANCIAL RESOURCE | | | |
| SPOUSE | | | L0402-36 | | | |
| J1002-03R.2 | | | Volume 3:3 | NOV 1993 | p.16 | |
| Volume 3:2 | JUL 1993 | p.14 | M0314-05 | | | |
| K1027-32 | | | Volume 3:4 | MAR 1994 | p.9 | |
| Volume 3:1 | MAY 1993 | p.9 | BANKRUPTCY | | | |
| SUPPORT OR MAINTENANCE PAYMENTS | | | K0530-15 | | | |
| K0707-14 | | | Volume 3:1 | MAY 1993 | p.12 | |
| Volume 3:3 | NOV 1993 | p.5 | K1120-14 | | | |
| K1111-12 | | | Volume 3:1 | MAY 1993 | p.11 | |
| Volume 3:2 | JUL 1993 | p.12 | CANADIAN CHARTER OF RIGHTS AND FREEDOMS | | | |
| TRUSTS | | | G1208-21 | | | |
| K1226-12 | | | Volume 3:3 | NOV 1993 | p.14 | |
| Volume 3:2 | JUL 1993 | p.15 | K1013-22 | | | |
| | | | Volume 3:3 | NOV 1993 | p.15 | |
| | | | K0117-06 | | | |
| | | | Volume 3:1 | MAY 1993 | p.10 | |
| | | | L0820-15 | | | |
| | | | Volume 3:4 | MAR 1994 | p.10 | |
| PART II: DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT | | | CASUAL GIFTS OR PAYMENTS | | | |
| | | | L0427-13 | | | |
| | | | Volume 3:2 | JUL 1993 | p.22 | |
| ABSENT FROM ONTARIO | | | CO-RESIDENCE | | | |
| L0129-13.R | | | K0306-10 | | | |
| Volume 3:4 | MAR 1994 | p.16 | Volume 3:2 | JUL 1993 | p.16 | |
| ADJOURNMENTS | | | | | | |
| L1108-04 | | | | | | |
| Volume 3:4 | MAR 1994 | p.11 | | | | |
| AGE | | | | | | |
| G1208-21 | | | | | | |

24

CUMULATIVE INDEX

CREDIBILITY

| | | | |
|------------|----------|------|--|
| L1108-04 | | | |
| Volume 3:4 | MAR 1994 | p.11 | |
| M0314-05 | | | |
| Volume 3:4 | MAR 1994 | p.9 | |
| M0423-25 | | | |
| Volume 3:4 | MAR 1994 | p.13 | |

DAMAGES OR COMPENSATION FOR PAIN AND SUFFERING

| | | | |
|------------|----------|------|--|
| M0217-20 | | | |
| Volume 3:3 | NOV 1993 | p.17 | |

DISCRETION

| | | | |
|------------|----------|------|--|
| L0403-11 | | | |
| Volume 3:2 | JUL 1993 | p.20 | |
| L0416-04 | | | |
| Volume 3:2 | JUL 1993 | p.17 | |
| L0318-01 | | | |
| Volume 3:2 | JUL 1993 | p.19 | |
| L0901-22 | | | |
| Volume 3:4 | MAR 1994 | p.8 | |
| M0416-15 | | | |
| Volume 3:4 | MAR 1994 | p.17 | |

EMPLOYABLE PERSON

| | | | |
|------------|----------|------|--|
| L0318-01 | | | |
| Volume 3:2 | JUL 1993 | p.19 | |

EVIDENCE

| | | | |
|------------|----------|------|--|
| K0117-06 | | | |
| Volume 3:1 | MAY 1993 | p.10 | |
| K0306-10 | | | |
| Volume 3:2 | JUL 1993 | p.16 | |
| K1210-15 | | | |
| Volume 3:3 | NOV 1993 | p.19 | |

EXTENSION OF TIME

| | | | |
|------------|----------|------|--|
| K0105-04 | | | |
| Volume 3:1 | MAY 1993 | p.12 | |
| K0530-15 | | | |
| Volume 3:1 | MAY 1993 | p.12 | |
| K1120-14 | | | |
| Volume 3:1 | MAY 1993 | p.11 | |
| M0318-22 | | | |
| Volume 3:4 | MAR 1994 | p.15 | |

FAILURE TO PROVIDE INFORMATION

| | | | |
|------------|----------|------|--|
| L0416-04 | | | |
| Volume 3:2 | JUL 1993 | p.17 | |

L1108-04

| | | |
|------------|----------|------|
| Volume 3:4 | MAR 1994 | p.11 |
| M0423-25 | | |
| Volume 3:4 | MAR 1994 | p.13 |

FAIRNESS

| | | |
|------------|----------|------|
| L0403-11 | | |
| Volume 3:2 | JUL 1993 | p.20 |

FINANCIAL HARDSHIP

| | | |
|------------|----------|------|
| M0128-21 | | |
| Volume 3:4 | MAR 1994 | p.13 |

HEAD OF A FAMILY

| | | |
|------------|----------|------|
| L0402-36 | | |
| Volume 3:3 | NOV 1993 | p.16 |

INCOME

| | | |
|------------|----------|------|
| K0326-25 | | |
| Volume 3:1 | MAY 1993 | p.15 |
| L1029-44 | | |
| Volume 3:2 | JUL 1993 | p.18 |

JOB SEARCH

| | | |
|------------|----------|------|
| L0318-01 | | |
| Volume 3:2 | JUL 1993 | p.19 |
| L0129-13.R | | |
| Volume 3:4 | MAR 1994 | p.16 |

JOINT CUSTODY

| | | |
|------------|----------|------|
| K0513-08 | | |
| Volume 3:1 | MAY 1993 | p.13 |

JURISDICTIONAL ISSUES

| | | |
|------------|----------|------|
| K0117-06 | | |
| Volume 3:1 | MAY 1993 | p.10 |
| M0318-22 | | |
| Volume 3:4 | MAR 1994 | p.15 |

LIQUID ASSETS

| | | |
|------------|----------|------|
| L0403-11 | | |
| Volume 3:2 | JUL 1993 | p.20 |

ONUS

| | | |
|------------|----------|------|
| K1224-03 | | |
| Volume 3:2 | JUL 1993 | p.20 |
| L0416-04 | | |
| Volume 3:2 | JUL 1993 | p.17 |

MARCH 1994

CUMULATIVE INDEX

| | | | |
|----------------------------------|----------|--|------|
| ONTARIO MOTORIST PROTECTION PLAN | | | |
| M0217-20 | | | |
| Volume 3:3 | NOV 1993 | | p.17 |
| OVERPAYMENTS | | | |
| K0306-10 | | | |
| Volume 3:2 | JUL 1993 | | p.16 |
| K1120-14 | | | |
| Volume 3:1 | MAY 1993 | | p.11 |
| M0128-21 | | | |
| Volume 3:4 | MAR 1994 | | p.13 |
| M0318-22 | | | |
| Volume 3:4 | MAR 1994 | | p.15 |
| PAYMENTS RECEIVED | | | |
| K0326-25 | | | |
| Volume 3:1 | MAY 1993 | | p.15 |
| M0217-20 | | | |
| Volume 3:3 | NOV 1993 | | p.17 |
| PERSON IN NEED | | | |
| K1126-04 | | | |
| Volume 3:3 | NOV 1993 | | p.18 |
| PREGNANCY ALLOWANCE | | | |
| K0513-08 | | | |
| Volume 3:1 | MAY 1993 | | p.13 |
| PRINCIPAL RESIDENCE | | | |
| L0403-11 | | | |
| Volume 3:2 | JUL 1993 | | p.20 |
| PROCEDURES | | | |
| K0117-06 | | | |
| Volume 3:1 | MAY 1993 | | p.10 |
| RECONSIDERATIONS | | | |
| L0129-13.R | | | |
| Volume 3:4 | MAR 1994 | | p.16 |
| REFUGEES | | | |
| L0416-04 | | | |
| Volume 3:2 | JUL 1993 | | p.17 |
| RENTALS | | | |
| K0326-25 | | | |
| Volume 3:1 | MAY 1993 | | p.15 |
| SELF-EMPLOYED | | | |
| K1126-04 | | | |
| Volume 3:3 | NOV 1993 | | p.18 |

| | | | |
|---------------|----------|--|------|
| L1022-15 | | | |
| Volume 3:4 | MAR 1994 | | p.18 |
| SINGLE PERSON | | | |
| K1013-22 | | | |
| Volume 3:3 | NOV 1993 | | p.15 |
| S.T.E.P. | | | |
| K0513-08 | | | |
| Volume 3:1 | MAY 1993 | | p.13 |
| L1029-44 | | | |
| Volume 3:2 | JUL 1993 | | p.18 |
| M0416-15 | | | |
| Volume 3:4 | MAR 1994 | | p.17 |
| STUDENTS | | | |
| K1117-09 | | | |
| Volume 3:1 | MAY 1993 | | p.16 |
| L0402-36 | | | |
| Volume 3:3 | NOV 1993 | | p.16 |

| | | | |
|---------------------------------|----------|--|-----|
| SUPPORT OR MAINTENANCE PAYMENTS | | | |
| M0314-05 | | | |
| Volume 3:4 | MAR 1994 | | p.9 |

| | | | |
|-------------------|----------|--|------|
| UNEMPLOYED PERSON | | | |
| K1210-15 | | | |
| Volume 3:3 | NOV 1993 | | p.19 |
| VISITORS | | | |
| M0523-01 | | | |
| Volume 3:4 | MAR 1994 | | p.18 |

| | | | |
|--------------------------------------|----------|--|------|
| WAGES, SALARIES, AND CASUAL EARNINGS | | | |
| L0427-13 | | | |
| Volume 3:2 | JUL 1993 | | p.22 |
| M0128-21 | | | |
| Volume 3:4 | MAR 1994 | | p.13 |

PART III: DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

| | | | |
|--|----------|--|------|
| CANADIAN CHARTER OF RIGHTS AND FREEDOMS | | | |
| K0215-19 | | | |
| Volume 3:4 | MAR 1994 | | p.20 |

SUMMARIES OF DECISIONS VOL. 3:4

| | | | |
|-------------------------------|----------|------|--|
| CREDIBILITY | | | |
| L0525-16 | | | |
| Volume 3:1 | MAY 1993 | p.17 | |
| DISABLED PERSON | | | |
| K1030-25 | | | |
| Volume 3:3 | NOV 1993 | p.20 | |
| L0623-11 | | | |
| Volume 3:4 | MAR 1994 | p.21 | |
| EXTENSION OF TIME | | | |
| H0906-09R | | | |
| Volume 3:1 | MAY 1993 | p.18 | |
| FAMILY BENEFITS | | | |
| H0906-09R | | | |
| Volume 3:1 | MAY 1993 | p.18 | |
| GOODS, ALLOWANCES OR SERVICES | | | |
| K1030-25 | | | |
| Volume 3:3 | NOV 1993 | p.20 | |
| ORDER IN COUNCIL | | | |
| K0215-19 | | | |
| Volume 3:4 | MAR 1994 | p.20 | |
| RECONSIDERATIONS | | | |
| H0906-09R | | | |
| Volume 3:1 | MAY 1993 | p.18 | |
| VOCATIONALLY DISABLED | | | |
| L1208-43 | | | |
| Volume 3:3 | NOV 1993 | p.21 | |

REFERENCES TO STATUTES
AND REGULATIONS

Bankruptcy Act

| | | | |
|------------|----------|------|--|
| s.69(1) | | | |
| K1120-14 | | | |
| Volume 3:1 | MAY 1993 | p.11 | |
| s.124(1) | | | |
| K1120-14 | | | |
| Volume 3:1 | MAY 1993 | p.11 | |

Canadian Charter of Rights and Freedoms

| | | | |
|------------|----------|------|--|
| s.1 | | | |
| G1208-21 | | | |
| Volume 3:3 | NOV 1993 | p.14 | |
| L0820-15 | | | |
| Volume 3:4 | MAR 1994 | p.10 | |
| s.7 | | | |
| K0215-19 | | | |
| Volume 3:4 | MAR 1994 | p.20 | |
| s.15(1) | | | |
| G1208-21 | | | |
| Volume 3:3 | NOV 1993 | p.14 | |
| K0215-19 | | | |
| Volume 3:4 | MAR 1994 | p.20 | |
| K1013-22 | | | |
| Volume 3:3 | NOV 1993 | p.15 | |
| L0820-15 | | | |
| Volume 3:4 | MAR 1994 | p.10 | |

Children's Law Reform Act

| | | | |
|-------------|----------|------|--|
| J1002-03R.2 | | | |
| Volume 3:2 | JUL 1993 | p.14 | |

Divorce Act, 1985

| | | | |
|------------|----------|------|--|
| s.2(1)(b) | | | |
| K1111-12 | | | |
| Volume 3:2 | JUL 1993 | p.12 | |

Family Benefits Act

| | | | |
|------------|----------|------|--|
| s.1(f) | | | |
| L0629-19 | | | |
| Volume 3:2 | JUL 1993 | p.7 | |
| L0212-01 | | | |
| Volume 3:3 | NOV 1993 | p.8 | |
| s.7(1) | | | |
| K0715-32 | | | |
| Volume 3:1 | MAY 1993 | p.7 | |
| M0924-01 | | | |
| Volume 3:4 | MAR 1994 | p.6 | |
| s.7(1)(d) | | | |
| L0212-01 | | | |
| Volume 3:3 | NOV 1993 | p.8 | |
| s.7(1)(f) | | | |
| K0820-01 | | | |
| Volume 3:1 | MAY 1993 | p.6 | |
| s.12(a) | | | |
| J0510-09 | | | |
| Volume 3:3 | NOV 1993 | p.10 | |

MARCH 1994

CUMULATIVE INDEX

| | | | |
|---------------------------------------|---------------------------|----------|------|
| s.12(b) | J0510-09 Volume 3:3 | NOV 1993 | p.10 |
| s.13(6) | H0906-09R Volume 3:1 | MAY 1993 | p.18 |
| s.14(4) | J1002-03R.1 Volume 3:2 | JUL 1993 | p.11 |
| s.17 | L0415-15.R Volume 3:4 | MAR 1994 | p.7 |
| s.18 | M0924-01 Volume 3:4 | MAR 1994 | p.6 |
| <u>Family Law Act</u> | | | |
| s.30 | J1002-03R.2 Volume 3:2 | JUL 1993 | p.14 |
| s.31(1) | J1002-03R.2 Volume 3:2 | JUL 1993 | p.14 |
| s.33(9)(a) | J1002-03R.2 Volume 3:2 | JUL 1993 | p.14 |
| s.33(9)(m) | J1002-03R.2 Volume 3:2 | JUL 1993 | p.14 |
| <u>General Welfare Assistance Act</u> | | | |
| s.1(n) | K1210-15 Volume 3:3 | NOV 1993 | p.19 |
| s.4(2) | K0513-08 Volume 3:1 | MAY 1993 | p.13 |
| s.7(1) | M0523-01 Volume 3:4 | MAR 1994 | p.18 |
| s.10(2)(b) | L0416-04 Volume 3:2 | JUL 1993 | p.17 |
| | L1108-04 Volume 3:4 | MAR 1994 | p.11 |
| s.10(3) | K0513-08 Volume 3:1 | MAY 1993 | p.13 |

| | | | |
|--|---------------------------|----------|------|
| s.11(2) | K0105-04 Volume 3:1 | MAY 1993 | p.12 |
| | M0318-22 Volume 3:4 | MAR 1994 | p.15 |
| s.11(3) | K0530-15 Volume 3:1 | MAY 1993 | p.12 |
| s.12 | K1120-14 Volume 3:1 | MAY 1993 | p.11 |
| <u>Immigration Act</u> | | | |
| s.26(1) | M0523-01 Volume 3:4 | MAR 1994 | p.18 |
| s.26(2) | M0523-01 Volume 3:4 | MAR 1994 | p.18 |
| s.27(e) | M0523-01 Volume 3:4 | MAR 1994 | p.18 |
| <u>Interpretation Act</u> | | | |
| s.4 | L0524-26 Volume 3:2 | JUL 1993 | p.6 |
| <u>Ministry of Community and Social Services Act</u> | | | |
| s.12(1) | J1002-03R.1 Volume 3:2 | JUL 1993 | p.11 |
| <u>Ontario Regulation 318, R.R.O. 1980</u> | | | |
| s.1(1)(a) | L0229-07 Volume 3:2 | JUL 1993 | p.9 |
| | L0211-20 Volume 3:3 | NOV 1993 | p.12 |
| s.2(5) | K0715-32 Volume 3:1 | MAY 1993 | p.7 |
| s.2(7) | L0524-26 Volume 3:2 | JUL 1993 | p.6 |
| s.5(b) | K1027-32 Volume 3:1 | MAY 1993 | p.9 |

CUMULATIVE INDEX

| | | | | | | | | |
|--|------------|----------|------|--|--|------------|----------|------|
| s.7(1) | L0211-20 | | | | <u>Ontario Regulation 441, R.R.O. 1980</u> | | | |
| | Volume 3:3 | NOV 1993 | p.12 | | s.1(1)(k) | L0403-11 | | |
| s.8 | | | | | | Volume 3:2 | JUL 1993 | p.20 |
| | K0707-14 | | | | s.1(1)(n)(ii) | K0117-06 | | |
| | Volume 3:3 | NOV 1993 | p.5 | | | Volume 3:1 | MAY 1993 | p.10 |
| | K0820-01 | | | | | K1013-22 | | |
| | Volume 3:1 | MAY 1993 | p.6 | | | Volume 3:3 | NOV 1993 | p.15 |
| | L0229-07 | | | | s.1(3) | K1126-04 | | |
| | Volume 3:2 | JUL 1993 | p.27 | | | Volume 3:3 | NOV 1993 | p.18 |
| s.13(1) | | | | | s.1(4) | L0402-36 | | |
| | K0715-32 | | | | | Volume 3:3 | NOV 1993 | p.16 |
| | Volume 3:1 | MAY 1993 | p.7 | | s.3(1b) | K1117-09 | | |
| | L0103-02 | | | | | Volume 3:1 | MAY 1993 | p.16 |
| | Volume 3:3 | NOV 1993 | p.13 | | | L0129-13.R | | |
| s.13(2)1 | J0313-15R | | | | | Volume 3:4 | MAR 1994 | p.16 |
| | Volume 3:1 | MAY 1993 | p.8 | | | L0318-01 | | |
| s.13(2)7 | | | | | | Volume 3:2 | JUL 1993 | p.19 |
| | J0313-15R | | | | s.3(1b)(i) | L0318-01 | | |
| | Volume 3:1 | MAY 1993 | p.8 | | | Volume 3:1 | JUL 1993 | p.19 |
| | K0715-32 | | | | s.3(1)(d)(i) | K1210-15 | | |
| | Volume 3:1 | MAY 1993 | p.7 | | | Volume 3:3 | NOV 1993 | p.19 |
| s.13(2)8 | | | | | s.3(1)(d)(ii) | K1210-15 | | |
| | L0103-02 | | | | | Volume 3:3 | NOV 1993 | p.19 |
| | Volume 3:3 | NOV 1993 | p.13 | | s.3(3)(a) | L0129-13.R | | |
| s.14(3) | | | | | | Volume 3:4 | MAR 1994 | p.16 |
| | L0420-16 | | | | | L0318-01 | | |
| | Volume 3:1 | MAY 1993 | p.4 | | | Volume 3:2 | JUL 1993 | p.19 |
| s.38(1) | | | | | s.3(3)(b) | L0602-17 | | |
| | L0722-21 | | | | | Volume 3:1 | MAY 1993 | p.5 |
| | Volume 3:2 | JUL 1993 | p.5 | | s.6(1)(c) | K1117-09 | | |
| s.38(2) | | | | | | Volume 3:1 | MAY 1993 | p.16 |
| | L0722-21 | | | | s.12(2)7 | K0513-08 | | |
| | Volume 3:2 | JUL 1993 | p.5 | | | Volume 3:1 | MAY 1993 | p.13 |
| s.41(1) | | | | | s.13(1)(a) and (b) | K0326-25 | | |
| | L0304-14 | | | | | Volume 3:1 | MAY 1993 | p.15 |
| | Volume 3:3 | NOV 1993 | p.6 | | | | | |
| <u>Ontario Regulation 336, R.R.O. 1990</u> | | | | | | | | |
| s.38(1) | M0405-19 | | | | | | | |
| | Volume 3:4 | MAR 1994 | p.5 | | | | | |
| s.38(2) | M0405-19 | | | | | | | |
| | Volume 3:4 | MAR 1994 | p.5 | | | | | |
| s.38(3) | M0405-19 | | | | | | | |
| | Volume 3:4 | MAR 1994 | p.5 | | | | | |

MARCH 1994

CUMULATIVE INDEX

| | | | |
|---|--|----------------------|-------------|
| s.13(2)1 | K0513-08 Volume 3:1 | MAY 1993 | p.13 |
| s.13(2)13 | K0326-25 Volume 3:1 | MAY 1993 | p.15 |
| s.31(2)22 | L0427-13 Volume 3:2 | JUL 1993 | p.22 |
| <u>Ontario Regulation 537</u> , R.R.O. 1990 | | | |
| s.1(1)(n)(b) | L0820-15 Volume 3:4 | MAR 1994 | p.10 |
| s.1(4a) | L1022-15 Volume 3:4 | MAR 1994 | p.18 |
| s.3(2)(d) | M0318-22 Volume 3:4 | MAR 1994 | p.15 |
| s.4(2d) | M0128-21 Volume 3:4 | MAR 1994 | p.13 |
| s.4(2e) | M0128-21 Volume 3:4 | MAR 1994 | p.13 |
| s.4(3)(a) | M0128-21 Volume 3:4 | MAR 1994 | p.13 |
| s.4(3)(b) | M0128-21 Volume 3:4 M0314-05 Volume 3:4 | MAR 1994 MAR 1994 | p.13 p.9 |
| s.5(1) | L1109-06 Volume 3:3 | NOV 1993 | p.14 |
| s.6(1) | L0901-22 Volume 3:4 | MAR 1994 | p.8 |
| s.7(6) | M0523-01 Volume 3:4 | MAR 1994 | p.18 |
| s.7(7)(c) | M0523-01 Volume 3:4 | MAR 1994 | p.18 |
| s.15(2) | L1029-44 Volume 3:2 | JUL 1993 | p.18 |

| | | | |
|--------------|------------------------|----------|------|
| s.15(2)(iv)C | M0416-15 Volume 3:4 | MAR 1994 | p.17 |
| s.15(2)2 | M0217-20 Volume 3:3 | NOV 1994 | p.17 |
| s.15(2)44 | M0217-20 Volume 3:3 | NOV 1994 | p.17 |

Ontario Regulation 943, R.R.O. 1990

| | | | |
|-----------|------------------------|----------|------|
| s.1(2) | L1208-43 Volume 3:3 | NOV 1994 | p.21 |
| s.6(a)(1) | K0215-19 Volume 3:4 | MAR 1994 | p.20 |
| s.6(a)(2) | K0215-19 Volume 3:4 | MAR 1994 | p.20 |

Statutory Powers Procedure Act

| | | | |
|------|---------------------------|----------|------|
| s.5 | J1002-03R.1 Volume 3:2 | JUL 1993 | p.11 |
| s.21 | L1108-04 Volume 3:4 | MAR 1994 | p.11 |

Unemployment Insurance Act

| | | | |
|---------|------------------------|----------|------|
| s.20(2) | K1210-15 Volume 3:3 | NOV 1993 | p.19 |
|---------|------------------------|----------|------|

Vocational Rehabilitation Services Act

| | | | |
|--------|--|----------------------|--------------|
| s.1(b) | K1030-25 Volume 3:3 L0623-11 Volume 3:4 | NOV 1993 MAR 1994 | p.20 p.21 |
| s.5(a) | L0623-11 Volume 3:4 | MAR 1994 | p.21 |
| s.6 | L0623-11 Volume 3:4 | MAR 1994 | p.21 |
| s.8 | K1030-25 Volume 3:3 | NOV 1993 | p.20 |

CUMULATIVE INDEX

| | | | |
|--------|------------|----------|------|
| s.9(b) | L0525-16 | | |
| | Volume 3:1 | MAY 1993 | p.17 |
| s.9(c) | L0525-16 | | |
| | Volume 3:1 | MAY 1993 | p.17 |

REFERENCES TO MANUALS

Family Benefits Policy and Procedural Guidelines Manual

| | | | |
|----------------|------------|----------|------|
| Policy 0203-02 | K0513-08 | | |
| | Volume 3:1 | MAY 1993 | p.13 |

| | | | |
|----------------|------------|----------|-----|
| Policy 0404-05 | L0212-01 | | |
| | Volume 3:3 | NOV 1993 | p.8 |

| | | | |
|----------------|------------|----------|------|
| Policy 0503-03 | K1120-14 | | |
| | Volume 3:1 | MAY 1993 | p.11 |

General Welfare Policy Guidelines

| | | | |
|------------|------------|----------|------|
| GW 0304-03 | K0513-08 | | |
| | Volume 3:1 | MAY 1993 | p.13 |

DEFINITIONS

| | | | |
|----------|------------|----------|------|
| "absent" | L0402-36 | | |
| | Volume 3:3 | NOV 1993 | p.16 |

| | | | |
|---|------------|----------|------|
| "dependent for support and maintenance" | K0513-08 | | |
| | Volume 3:1 | MAY 1993 | p.13 |

| | | | |
|------------|------------|----------|------|
| "earnings" | L0427-13 | | |
| | Volume 3:2 | JUL 1993 | p.22 |

"liberty"

| | | | |
|---------------|-------------|----------|------|
| K0215-19 | | | |
| Volume 3:4 | MAR 1994 | | p.20 |
| "living with" | J1002-03R.2 | | |
| | Volume 3:2 | JUL 1993 | p.14 |
| K0117-06 | | | |
| Volume 3:1 | MAY 1993 | | p.10 |
| K0513-08 | | | |
| Volume 3:1 | MAY 1993 | | p.13 |

| | | | |
|----------------|------------|----------|-----|
| "on behalf of" | K0715-32 | | |
| | Volume 3:1 | MAY 1993 | p.7 |

| | | | |
|--------------------|------------|----------|------|
| "reasonable cause" | M0318-22 | | |
| | Volume 3:4 | MAR 1994 | p.15 |

| | | | |
|-------------|------------|----------|-----|
| "residence" | K0715-32 | | |
| | Volume 3:1 | MAY 1993 | p.7 |

| | | | |
|------------------------|------------|----------|-----|
| "shared accommodation" | L0304-14 | | |
| | Volume 3:3 | NOV 1993 | p.6 |

| | | | |
|----------|-------------|----------|------|
| "spouse" | J1002-03R.2 | | |
| | Volume 3:2 | JUL 1993 | p.14 |

| | | | |
|-----------|------------|----------|------|
| "support" | K1111-12 | | |
| | Volume 3:2 | JUL 1993 | p.12 |

| | | | |
|----------------|------------|----------|-----|
| "supported by" | L0212-01 | | |
| | Volume 3:3 | NOV 1993 | p.8 |

| | | | |
|-----------|------------|----------|------|
| "visitor" | M0523-01 | | |
| | Volume 3:4 | MAR 1994 | p.18 |

MARCH 1994

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**BULLETIN and
SUMMARIES OF
DECISIONS**

Volume 4

May 1995

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SOCIAL ASSISTANCE REVIEW BOARD

BULLETIN

In January 1995 *Maureen T. Adams* was appointed to a three-year term as Chair of the Social Assistance Review Board.

Ms. Adams was first appointed to the Board as Vice Chair in 1988. In September 1993 she became SARB's first Executive Vice Chair, a position combining administrative and adjudicative responsibilities. Previously she held a number of positions in the community social services sector, as Coordinator of a Women's Shelter, as a Community Legal Worker and as Director of a Distress Centre, among others.

Maureen Adams is also an active community volunteer. She's been an advisory committee member in the Community Services Program at George Brown College, founding member and president of the Emily Stowe Shelter for Women, member of the Board of Directors of the Elizabeth Fry Society, and an officer of the Ontario Association of Interval and Transition Houses.

A MESSAGE FROM THE CHAIR

This is a very positive time to assume leadership of the Social Assistance Review Board. Many factors have contributed to a new energy and a renewed sense of commitment to our work. Although our large caseload remains a challenge, for the first time in a number of years it has not shown the sharp and surprising increases that we became accustomed to during the recession.

Second, we have received new funding which will improve our effectiveness in several key areas. Amendments to our enabling legislation have made it possible to increase the number of Vice Chairs and I am pleased to bring you up to date on new Order-in-Council appointments to the Board in this issue. We look forward to working with them in the years to come.

Third, plans are underway to expand our office space in the near future. This improved work environment and our strengthened resources have encouraged us in our efforts to solve some of the serious caseload problems which remain. In particular, I will make it the key priority of my term as Chair to attempt to reduce the delays in scheduling hearings and in releasing decisions. The Board recognizes that speedy justice is essential to minimize the uncertainty in people's lives.

We look forward to continuing to work responsibly and responsively with our partners in the Social Assistance Community. ■

Maureen T. Adams



CPO TRAINING

Between January and the middle of April 1995, at the invitation of Ministry of Community and Social Services trainers, members of SARB's legal unit travelled to various parts of Ontario, assisting in the training of case presenting officers. CPOs will present the respondents' position to the Board at hearings in increasing numbers.

The province conducted week-long sessions for personnel who prepare submissions, appear before the Board, or are otherwise regularly involved with the Board. Every Friday, one or more members of the legal unit gave a presentation, highlighting such areas as Board policies and procedures, how to make an effective presentation to the Board, and explaining how decisions about interim assistance are made. These sessions opened new lines of communication between the Board and the Ministry and municipalities.

We have been invited to participate in future sessions.

FACES

We are pleased to announce the following new appointments to the Board.

Judy Aikman-Springer

Ms. Springer was previously employed with the Ombudsman as a District Officer. She was also a staff lawyer

with Legal Assistance of Windsor. She represented clients before SARB and other administrative tribunals. Ms. Aikman-Springer was called to the Bar in 1991. In a voluntary capacity she has worked with immigrant and visible minority organizations on issues affecting women. *Southwest Region. Appointment effective October 1994.*

Shirley Clement

Ms. Clement was previously employed with the Office of the Worker Adviser where she represented injured workers at all levels of appeal in the Workers' Compensation system. Prior to joining the OWA, Ms. Clement was a community legal worker with the Algoma Community Legal Clinic in Sault Ste. Marie. Her work there included appearances before SARB. She has a master's degree in social work and is a member of the Ontario Association of Professional Social Workers. *Southwest Region. Appointment effective October 1994.*

Charinee De Silva

Ms. De Silva was formerly a staff lawyer with Jane Finch Community Legal Services and with Downsview Community Legal Services. In these positions she represented many clients before SARB and other administrative tribunals. Ms. De Silva received her legal training in Sri Lanka. She was called to the Ontario Bar in 1986. *Toronto. Appointment effective October 1994.*

Peter Farncombe

Mr. Farncombe was previously employed as an investigator with the Ombudsman's office. He has also been a policy analyst with the Ministry of Community and Social Services and a community legal worker who appeared before tribunals dealing with social assistance matters. Mr. Farncombe has a master's degree in social welfare policy and has worked extensively in youth services organizations. *Toronto. Appointment effective May 1995.*

Suparna Ghosh

Before joining SARB, Ms. Ghosh was a member of the Rent Review Hearings Board. Her work as an adjudicator included conducting hearings and writing comprehensive decisions. Ms. Ghosh obtained her master's degree in India. She has also completed courses at the Arbitration and Mediation Institute of Ontario. *Toronto. Appointment effective May 1995.*

Anna-Maria Marcuccio

Ms. Marcuccio was formerly a lawyer with the Sudbury Community Legal Clinic where she was also involved in legal education and law reform activities. She represented clients before SARB on many occasions. Ms. Marcuccio was also a deputy judge in the Small Claims Court in Sudbury. She was called to the Ontario Bar in 1984. *Northern Ontario. Appointment effective October 1994.*

Donna McGavin

Ms. McGavin was a member of the Rent Review Hearings Board from 1987 to 1994. In this position she conducted hearings and wrote comprehensive decisions. Ms. McGavin has completed training in arbitration, mediation, and dispute resolution, in addition to French language training. *Toronto. Appointment effective October 1994.*

John McKean

Mr. McKean is the former Legal Director of Bloor Information and Legal Services. He worked in the legal clinic system for many years and his area of expertise is social assistance law. He has extensive experience appearing before administrative tribunals and courts and has done appeal work on social assistance cases. Mr. McKean was called to the Bar in Ontario in 1979. *Toronto. Appointment effective May 1995.*

Beverley Moore

Ms. Moore is a community legal worker whose area of expertise is social assistance law. She has extensive experience in appearing before administrative tribunals. She has also worked with developmentally handicapped adults. Ms. Moore has a bachelor's degree in human resources development. *Toronto. Appointment effective May 1995.*

Sa'ad Saidullah

Mr. Saidullah was the executive director of the South Asian Fellowship, a volunteer non-governmental development organization. He has also worked with Oxfam India and other aid organizations. Mr. Saidullah took his degree in law in India and also has a bachelor of commerce degree from a Canadian university. He has served in a volunteer capacity as a board member of Bloor Information and Legal Services. *Toronto. Appointment effective May 1995.*

Janis Sarra

Ms. Sarra joins the Board in a part-time capacity. She was formerly Vice Chair at the Pay Equity Hearings Tribunal for six years as well as a Member of the Ontario Labour Relations Board. Ms. Sarra has a master's degree in political economy and is currently studying law. *Toronto. Appointment effective October 1994.*

Kate Stark

Ms. Stark has worked in the social services field in the areas of service delivery and policy development. She has also been an educator in social service programs at a community college, a member and president of St. Christopher House, and a vocational rehabilitation counsellor. On a part-time basis, Ms. Stark was also a consultant with SARB, facilitating and co-ordinating the work of committees

and the case management project. She received a Master of Social Work degree in community development in 1983. *Toronto. Appointment effective October 1994.*

Dorothy Thomas

Ms. Thomas also joins the Board on a part-time basis. She was formerly a member of the Rent Review Hearings Board, where her work as an adjudicator involved both the conducting of hearings and the writing of comprehensive decisions. Ms. Thomas was also a member of Toronto City Council for nine years. She has a professional background in journalism and has completed training in mediation and arbitration. *Toronto. Appointment effective May 1995.*

Theresa Walsh

Ms. Walsh worked with Community Legal Services of Niagara from 1992 to 1994, providing legal advice and representation to low income people and children in need of protection. She was also a part-time Vice Chair with the Ontario Commercial Registration Appeals tribunal from 1992. Ms. Walsh was called to the Ontario Bar in 1987. *Niagara Region. Appointment effective October 1994.*

Catherine Wyatt

Ms. Wyatt was formerly an appeals officer at the Ontario Information and Privacy Commission where she

analysed complex legislation and prepared draft orders. She has also worked in rent review services with the Ministry of Housing. Ms. Wyatt was called to the Bar in 1982 and was in private practice for a time. *Toronto. Appointment effective May 1995.* ■

PLACES AND SPACES

More appeals, more staff to handle the appeals, and many more files have put new pressures on our already crowded

work environment here at 1075 Bay Street. The Ministry of Community and Social Services has come to the rescue with some badly needed funding and SARB expects to expand its office space in early July. Fortunately, we were able to take over the remaining area on this floor so our address will not change and we'll still be easy to find.

Plans call for more hearing rooms, more offices and workstations, and a larger reception area equipped with a washroom. ■

CASELOAD Ups and Downs

With economic conditions in our province in continuing flux, Ontario's social assistance safety net plays a more and more significant role every year. Although the rate of growth has slowed a little, SARB continues to contend with heavy caseloads and the number of appeals launched in 1995-96 is expected to equal that of 1994-95.

The past few years have tested our resources to the limit but have also given us an unparalleled opportunity to develop effective caseload management strategies. One such strategy, first adopted in 1994-95, is the rotational hearing schedule. Hearings move from region to region on a 13-week cycle. The frequency of scheduling in any given region depends on the number of cases to be heard in that area. This ensures that the Board conducts hearings in all regions of the province on a regular and consistent basis.

In order to schedule more hearings within a specific period of time Vice Chairs now sit in single member panels. SARB continues to have complex cases, reconsiderations, and *Charter* cases heard by multi-member panels.

While searching for ways to expedite hearings, we continue to focus all our efforts on providing quality, caring service. The challenges have never been greater. ■

KEY TELEPHONE NUMBERS

Office of the Chair

Maureen T. Adams 326-5110

Secretary to the Chair

Joy Earl 326-5110

General Manager

Mary-Louise Noble 326-5112

Secretary to the General Manager

Jean Ford 326-5111

Manager, Finance and Administration

Bill Tyler 326-5117

Intake Coordinator and Appeals Officers

Intake Coordinator

Barbara Marwood 326-5160

Appeals Officers

Angela Cornack 326-5202

Jocelyn Grills 326-5162

Dave Misir 326-5209

Susan Pender 326-5171

Scheduling Unit

Beverly Allison 326-5119

Lata Anathan 326-5199

Maureen Baker 326-5121

Susan Cavanagh 326-5128

Claudette Ferguson 326-5134

Jayashri Nijhowne 326-5126

Sharon Watts 326-5123

Publishing

Beth McAuley 326-5175

Shirley Scott 326-5176

Legal Unit

Manager, Joanne Leatch 326-5194

Counsel, Sharon Buchanan 326-5184

Counsel, Marie Dyach 326-5192

Counsel, Daphne Intrator 326-5188

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PART I

DECISIONS UNDER THE
FAMILY BENEFITS ACT

ASSIGNMENT

Other Index Terms: OVERPAYMENTS

File Number: M1223-50

Date of Hearing: December 7, 1994

Presiding Member: E. Novac

The Appellant was a permanently unemployable person. She also applied for similar benefits as a disabled person under the *Canada Pension Plan Act* and signed an assignment form giving her consent for Health and Welfare Canada to reimburse the Province of Ontario for any duplication of payments. She was granted a CPP disability pension. Her caseworker advised her not to spend any of the CPP money that she might receive until the Director had been reimbursed.

The Director then received a payment from CPP in the amount of \$5,457.71, and the Appellant received a retroactive award of \$13,337.32. In a memo, however, the Appellant's caseworker reversed the names of the payees and incorrectly stated that the Director had received the larger amount and the Appellant the smaller amount. The Appellant advised her caseworker of the mistake and at this point it became apparent that there were more problems with the amounts that would require further investigation. The Appellant's benefits were then suspended on the grounds that she had failed to verify her income. She testified at the hearing that she had spent the total CPP award of more than \$13,000 before the matter was resolved. The Appellant then received a series of notices from the Director advising her of various overpayment amounts arising from the CPP award.

The parties did not dispute the fact that the Appellant had incurred an overpayment and the amount of the overpayment. Counsel for the Appellant submitted that a portion of the overpayment should not be recovered because it was caused by administrative errors made by

the caseworker.

Some of the errors resulted from improper completion of the assignment form. After a thorough analysis of this form and the details recorded on it by the parties, the Board concluded that the form did not permit the Director to provide enough detailed information for CPP to calculate the proper amount to be paid to the Director. In the view of the Board, the fault was both in the construction of the form itself, which limits information to only a twelve-month period, and the Director's failure to provide additional information for a longer time period. Whether such an addendum would have been accepted by CPP remained a question, as the assignment form is an official document created under legislation and, as such, cannot be amended by the Director.

However, in response to counsel's argument, the Board found that the assignment form had been properly completed by the caseworker and the problem that arose was not sufficient to conclude that the overpayment should not be recovered, particularly because the Appellant had clearly received a duplication of benefits and had been warned not to spend the money.

Counsel also argued that it was the Ministry's duty to find and rectify the errors. The Board was of the view that after CPP had made its respective payments to the parties, the Director was powerless to request changes from CPP and that any problems were between the parties themselves. In the present case, it required a four-month period for the Director to review the file and notify the Appellant of the overpayment. The Board did not find this time period unreasonable in light of the complexity of the discrepancies. And while the Board agreed that the caseworker's confusion of the payees was problematic, the Board did not consider that this error was so grievous as to render the overpayment unrecoverable. On the other hand, there was no explanation why the Appellant spent the balance of the CPP payment before she had received further direction.

Although the Board ruled in the Director's favour in this case, the Board agreed with counsel for the Appellant that there is evidence of systemic problems concerning Canada Pension Plan assignments and made suggestions for improvement. **Appeal denied. Decision of the Director affirmed.** (10 pp; English)

FAMILY BENEFITS ACT

REFERENCES: *Re Harris and Ministry of Community and Social Services*, (1975) 8 O.R. (2d) 721 ■

INTERIM ASSISTANCE

Other Index Terms: JURISDICTIONAL ISSUES; OVERPAYMENTS

File Number: M0219-20

Date of Hearing: June 22, 1994

Presiding Member: M. Adams

The Appellant, a sole-support parent, had her allowance reduced because the Director determined that she was not making reasonable efforts to obtain support from the father of her child. The Appellant appealed this reduction to the Board and requested interim assistance pending the Board's review of her case. The Board granted her request for interim assistance.

When the Board issued its decision in the matter, it denied the appeal and found that the Director's decision to reduce the Appellant's allowance had been correct. As a result of the Board's decision the Director assessed an additional overpayment, adding it to the Appellant's existing overpayment. The added amount was the amount of interim assistance that the Appellant had received. The issue before the Board was whether the Director could recover interim assistance payments by assessing an overpayment and recovering it from an appellant's allowance.

The Director's powers with respect to overpayments are outlined in section 17 of the *Family Benefits Act*, which stipulates that the Director may only recover a sum which has been paid to a recipient "by way of an allowance". The question before the Board was therefore whether the payment of interim assistance is such a payment. If this proved to be true, the statute authorizes the recovery of monies to which the recipient "was not entitled under this Act". Therefore, the second issue was whether the payment of interim assistance pursuant to an order of the Board constituted the payment of an allowance to which the recipient was not entitled.

A review of the legislation indicated to the Board that the powers and responsibilities for granting allowances and for granting interim assistance are completely different. Allowances are ongoing monthly payments

that are of a permanent nature and can continue for an extended period of time. The test for granting an allowance is exhaustive and includes an assessment of income, budgetary requirements, and categorical eligibility. Interim assistance payments, however, are of a temporary and time-limited nature. In the Board's view the legislation clearly indicates that the test for granting interim assistance is financial hardship. An order granting interim assistance is not intended to be a decision on the merits of the appeal and does not address the factors which the Director must assess when deciding whether to grant an allowance. The Board concluded that interim assistance is not an "allowance". Moreover, given that the Appellant received interim assistance pursuant to the Board's order, the Board found that she did not receive a payment to which she was not entitled. **Appeal granted. Decision of the Director rescinded.** (7 pp; English)

REFERENCES: *Family Benefits Act* s.14(2), s.17; "allowance" ■

LIQUID ASSETS

Other Index Terms: DISABLED PERSON

File Number: M1202-62

Date of Hearing: October 26, 1994

Presiding Member: E. Novac

The Appellant received an allowance as a married disabled person. His assets included cash, certificates, and a vehicle that was considered a necessity because his wife, a real estate agent, needed it for her work. The value of these assets fell within the allowable amount.

When completing a Client Information Update Report the Appellant reported a second vehicle and a mobile home in Florida. The mobile home was purchased with a down payment provided by the Appellant's son. The property itself was listed solely in the name of the Appellant's spouse who had arranged the transaction during a vacation. The combined value of the car and property was \$11,000. The Director determined that the second vehicle and second property were not necessities and that the Appellant had assets in excess of the allowable amount.

The Board concluded that the second vehicle could not

be exempt from consideration as a liquid asset. The Appellant's spouse, however, testified that she had tried to sell the second vehicle at a price somewhat above its book value and had received no offers. In the Board's view, continuing efforts to sell this vehicle at a more reasonable asking price would exempt this vehicle from consideration as a liquid asset.

The Board also found that the second property was a liquid asset. The legislative provision which permits a recipient to have an interest in real property other than a principal residence requires that such an arrangement be necessary for the recipient's health and welfare. The Appellant had submitted a note from his doctor, which stated that "going to Florida would benefit his health". However, the Board agreed with the Director that this note was too vague and was insufficient evidence to exempt the asset. **Appeal denied. Decision of the Director affirmed.** (5 pp; English)

REFERENCES: O. Reg. 366 s.6(2) ■

PERMANENTLY UNEMPLOYABLE PERSON

Other Index Terms: EVIDENCE

File Number: M1012-39

Date of Hearing: January 10, 1995

Presiding Member: K. Zinger

The Appellant's testimony indicated that she had many health problems, including back pain, headaches, chest pain, sleep disturbance, lack of energy, forgetfulness, and depression. At the hearing, the Board found that the Appellant's testimony was often extremely vague. The Board made certain that there was no problem with the interpretive services and also took care to determine that the Appellant was not reticent because of privacy issues. However, because of the vagueness of the testimony, the Board was unable to determine the real nature of her medical complaints and found that it could give little weight to her oral testimony.

The Board also reviewed numerous medical reports submitted by the Appellant, giving more weight to the more recent reports. However, in all the medical evidence there was no diagnosis respecting her complaints about various types of pain. Because of this, the Board was unable to determine whether the Appellant was unable to return to work as a result of the conditions that were before the Board. Moreover, the medical evidence did not give a clear indication of

the extent to which her physical and mental conditions prevented her from working as a seamstress. The Board concluded that the Appellant was not eligible for an allowance. **Appeal denied. Decision of the Director affirmed.** (5 pp; English)

REFERENCES: none ■

SPONSORED DEPENDANT OR NOMINATED RELATIVE

File Number: M0715-02

Date of Hearing: May 3, 1994

Presiding Member: L. Bradbury

It was agreed by all parties that this would be a test case and that the Board's decision would be considered persuasive in future cases on the same issue.

There were two questions before the Board. First, was the Appellant a "sponsored dependant or nominated relative" within the meaning of the Regulation under the *Immigration Act*? If the answer to this question was yes, the second question was whether the Appellant was residing "in the home of" the sponsor.

The Appellant, his wife and three children were sponsored to come to Canada by the Appellant's older son. The Appellant worked until he was laid off and was unable to find other work. He received Unemployment Insurance benefits for one year. After they ceased he was granted social assistance on the grounds that he was a married person aged 60 years or more. The Appellant had been a landed resident since 1986 and at the time of his application for benefits it was the Ministry's policy that sponsored immigrants were not required to pursue support from their sponsors after five years of landed residence. When his son, the sponsor, married and bought a house, he asked the Appellant and his family to share the house with him.

Both parties agreed that the terms "sponsored dependant" and "nominated relative" have not existed in the *Immigration Act* since 1978. The current statute contains terms that refer to somewhat different groups than the earlier terms. The Director submitted that the use of the terms "sponsored dependant" and "nominated relative" was a mistake in legislative drafting and that this mistake should not be used to defeat the purpose of the legislation respecting

FAMILY BENEFITS ACT

sponsored immigrants. The Director submitted that the error should therefore be corrected by the Board.

Among other arguments counsel for the Appellant submitted that departure from the plain meaning of statutory language is not justified where it is based on assumptions as to legislative purpose and intent. Further, the interpretive role of SARB does not allow it to add terms to a statute that are not already implicit within the statute.

Applying the principle that "the law is always speaking", as confirmed in *Ackland v. Yonge-Esplanade Enterprises Limited*, the Board found that the reference to the *Immigration Act* must be viewed as a reference to that statute as it currently exists.

The new terms used in the *Immigration Act* are "member of the family class" and "assisted relative". In the view of the Board these terms apply to certain defined categories of sponsored immigrant rather than to every sponsored immigrant. Moreover, while there is overlap between the categories of sponsored immigrants who are encompassed by the old and new terms, the terms are not strictly equivalent.

The Board concluded that it could not correct or change the words in the Regulation for several reasons. Refusing to give the terms used in the regulation a different meaning does not lead to an absurd result in this case; it simply means that the Appellant, a sponsored parent, cannot be considered a sponsored dependant or nominated relative. Moreover, although remedial legislation is to be given a broad and liberal interpretation generally, the courts apply a strict interpretation where legislation removes protections or rights. As noted above, the legislative provision in question decreases benefits to those who have been found to be in need and the Board could not agree that it was a minor drafting error that the Board could correct.

The Board found that the Appellant was not a "sponsored dependant or nominated relative" within the meaning of the *Immigration Act*. The Board went on to consider the meaning of the words "reside" and "home", although it was not strictly necessary to continue to address this for the case in question.

In the Board's opinion, when the phrase "residing in the home of" is considered in context and in light of its purpose, the important aspect of the terms is the

physical occupation in a dwelling place and not the relationship between the parties. In this case the Appellant was clearly residing in the sponsor's home. The Board furthermore determined that the phrase applies to those who live in accommodations owned by the sponsor, even if the sponsor does not live there. In the case of persons who live outside the home of their sponsors however, the relationship between the parties may be relevant since the legislation acknowledges the possibility of sponsorship breakdown and states that the income deeming provisions do not apply where this has occurred. The absence of a comparable provision for those living in the home of the sponsor reinforces the Board's opinion on this question. **Appeal granted. Decision of the Director rescinded.** (16 pp; English)

REFERENCES: O.Reg. 366 s.13(2)10, 13(2)10.1, 13(15), 13(16), 13(17); *Ackland v. Yonge-Esplanade Enterprises Limited* (1992), 10 O.R. (3d) 97 (Ont.C.A.); *A.G. (Ont.) and Viking Houses v. Peel* (1980), 104 D.L.R. (3d) 1 (S.C.C.); "residing in the home of" ■

SPOUSE

Other Index Terms: CO-RESIDENCE

File Number: L1028-20

Date of Hearing: January 19, 1994

Presiding Member: M. McCormick

The Appellant received an allowance as a sole-support parent. Her allowance was terminated effective January 1, 1993, on the grounds that she was living with her spouse.

At the hearing she readily acknowledged that she had co-resided with A. since January 1, 1990. The two had known one another since childhood and were both living in unsatisfactory housing situations at the time. When they found a large apartment that met both their needs, they moved in together. Later that year, A. named the Appellant as the beneficiary of his life insurance policy because he had no suitable relatives living in Ontario whom he trusted to pay off his debts and divide the remainder among his siblings. The Appellant undertook to follow his directions in this regard.

In 1992 A. decided to buy a house for himself, but the bank told him that his income was not sufficient to do

so. If, however, the Appellant continued to share space with him and pay rent to him, the bank would agree to grant him a mortgage. They decided to do this until such time as the Appellant finished school. Since the mortgage was to be insured by Canada Mortgage and Housing, it was necessary for the Appellant's name to be added to the title of the home.

At this time the Appellant and A. were not known as a couple by professional practitioners, in the neighbourhood, or by any public authority. They did not attend social functions together, share vacations, or spend Christmas together. However, in November 1992, the Appellant and A. had several discussions about whether their relationship might lead to a commitment to each other and Mr. A. was taking a more active role with the children.

The issue before the Board was the date when the three-year period of cohabitation began. Was it from the time that the co-residence began or was it from the time that co-residence began to be cohabitation?

In the Board's view, the three-year term refers to a settled cohabitation relationship which has existed for three years. Otherwise, if cohabitation began on the last day of the three years of co-residence, the Appellant, her children and A. would be viewed as a family unit. The Director's policy also reflects this interpretation; the policy manual directs workers to schedule a subsequent review if it is established during the three year review that cohabitation began fewer than three years earlier.

Were the Appellant and A. cohabiting on the date they first moved in together? The Board found that the Appellant's evidence established that they were not cohabiting at that time. There was no common financial relationship in 1990 other than that of sharing costs. The Board was satisfied that naming the Appellant as beneficiary on the life insurance policy was merely an attempt to avoid making a will. Socially, they were not recognized as a couple and the activities that they joined in were the activities of mere friends. In 1990 they did not vacation together, nor was there a parent-child relationship between A. and the Appellant's sons.

The evidence indicated that elements of their financial and social relationship changed in 1992, beginning with the purchase of the home. However, as the issue before the Board was the Appellant's eligibility for an allowance on January 1, 1993, the Board did not need

to determine whether they were cohabiting in 1992.
Appeal granted. Decision of the Director rescinded.
(6 pp; English)

REFERENCES: O.Reg. 366 s.1(3) ■

TRUSTS

Other Index Terms: AVAILABLE FINANCIAL RESOURCE; FAILURE TO PROVIDE INFORMATION

File Number: M0429-31

Date of Hearing: December 1, 1993

Presiding Member: K. Zinger

The Appellant received General Welfare Assistance as a sole-support parent of two children. She was referred to Family Benefits and completed an application. The Administrator then received information that the Appellant had been found ineligible for Family Benefits because she had assets in excess of the allowable limit and had failed to provide information. Subsequently, her General Welfare Assistance was cancelled on the grounds that she had failed to obtain compensation from other resources, namely Family Benefits, and because she had assets in excess of the allowable limit. The General Welfare and Family Benefits appeals were heard concurrently.

Regarding the alleged failure to provide information, the Director submitted that the Appellant was asked to verify the amount of her CPP benefits, to verify the amount of her rent by providing a copy of the lease or a rent receipt, to verify the cost of her fire insurance, and to verify that the money held in trust for her children was not available for her or her children's use. According to the evidence, she provided a copy of a private trust agreement, a letter regarding a public trust, and a letter from her lawyer confirming that private trust monies were not available to the Appellant.

The Appellant testified that she had provided verification of her rent and pension benefits by delivering an envelope to the reception desk of the Family Benefits office. She testified that she did not provide fire insurance information because the policy was not in her name and she did not contribute any payment towards it. Both the Appellant and her lawyer had been under the impression that they had provided all that was requested and did not know that there was

FAMILY BENEFITS ACT

a problem until she was notified of her denial. The Board found the Appellant's testimony to be credible and concluded that she had acted promptly in providing the requested information.

The Director also submitted that the liquid assets of the Appellant and her children were in excess of the allowable limit. The assets in dispute were a public trust fund held by the Official Guardian's Office and private trust funds of \$49,000 for each of her two children. The children's grandfather was the trustee of the private trusts.

The first question to be considered was whether the public trust fund was a liquid asset available to be used for the maintenance of the children. This fund was set up as a result of the death of the children's father. Pursuant to subsection 36(6) of the *Trustee Act*, the insurer paid the total amount of death benefits into court to be held in trust with the Official Guardian. After the Appellant had been denied Family Benefits, she brought an application in court to have monies paid out of the public trust fund. A letter from the Official Guardian's Office confirmed that this application was refused and that the money could not be paid for the general maintenance of the children. In light of this court ruling, the Board concluded that the money in this fund was not a liquid asset.

The Board next considered the private trust fund. The Appellant wrote to the solicitors for the trustee and the trustee "adamantly refused" to release any money. Since there had been no court application or definitive court ruling on the status of private trusts, the provisions of this trust were considered in light of the applicable jurisprudence. The guiding principle established by the courts is that trust assets are not "available" to the beneficiary in those instances where a trustee has absolute discretion as to whether or not to pay out the assets of the trust for the benefit of the beneficiary.

Relying particularly on the cases of *Director of Income Maintenance Branch of the Ministry of Community and Social Services v. Powell* and *Director of Income Maintenance (Ont.) v. Henson*, the Board concluded that the trustee's power with respect to the capital of the private trust was absolute and the capital therefore could not be considered a liquid asset. The trustee's discretion over the income of the trust, however, was not absolute and the income was a liquid asset within the meaning of the Regulation 366. Because the Board

had no evidence about the amount of the income from the private trust fund or about other liquid assets of the Appellant the Board referred the question of whether these assets were in excess back to the Director.

The final question before the Board concerned the Appellant's eligibility for General Welfare Assistance. The Administrator argued that because the Appellant had failed to provide information to the Family Benefits office and had also failed to obtain compensation from the trust funds, she was ineligible. The Board has found that the Appellant did not fail to provide information to the Director and that the Appellant had made reasonable efforts to obtain money from the trust funds. In the view of the Board, the Administrator could no longer rely on these grounds as reasons for ineligibility and should not have terminated the Appellant's assistance. **Appeal granted in part. Decisions of the Director and Administrator rescinded in part.** (14 pp; English)

REFERENCES: *Trustee Act* s.36(6); O.Reg. 366 s.3(1)(b), O.Reg. 537 s.4(3)(b); *Director of Income Maintenance Branch of the Ministry of Community and Social Services v. Powell, Director of Income Maintenance (Ont.) v. Henson* (1987), 26 O.A.C. 332 (Div. Ct.; affirmed by the Court of Appeal in an unreported decision dated September 22, 1989) ■

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PART II

DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

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COMMUNITY START-UP

File Number: M0221-15
Date of Hearing: July 20, 1993
Presiding Member: S. Roy

The Appellant, her husband and children had been living for some time in a distant community where her husband was allegedly self-employed. They moved back to their home community where they received General Welfare Assistance for several months, but

again returned to the distant community. On their return from a visit to a relative in another part of the province the Appellant's husband was arrested and incarcerated. She was stranded in the middle of the journey with only enough money to get herself and her children back to her home community.

She decided to remain there rather than returning to the distant community because she thought she would benefit from the help and support of family and friends in her husband's absence, particularly since she suffered from epilepsy and was easily stressed. She resided with her mother-in-law at first but then applied for General Welfare Assistance and made plans to move to her own apartment. Her furniture and belongings, however, were still in the distant community where they had been left before her husband's incarceration. The rent there was in arrears and the landlord demanded \$500 for the return of her furniture. Moving the furniture to her new home cost her another \$300.

After a local distress centre told her about the community start-up allowance, she applied for it, in order to repossess her furniture and set up her home. The Administrator denied the request on the grounds that there were no health and welfare reasons for the Appellant to have left her residence in the distant community. As evidence, the Appellant presented several doctors' letters, which confirmed that her epileptic seizures were triggered by stress. One of these letters confirmed that her condition had improved significantly since the move back to her home community. The Administrator, who had not received all of these letters before the hearing, had rejected the documentary evidence on the grounds that it did not consider her condition prior to her move back home.

In coming to its conclusion, the Board noted that the payment of a community start-up allowance is mandatory when the recipient meets the statutory criteria. In the view of the Board, at the time of his decision, the Administrator lacked sufficient medical evidence to fully understand the impact on the Appellant's health of living in the distant community alone and without the support of family and friends. Nor did the Administrator dispute the additional medical evidence when it was provided. The Board was satisfied that the Appellant met the legislative criteria and qualified for the maximum start-up allowance. **Appeal granted. Decision of the Administrator rescinded.** (6 pp; English)

REFERENCES: O.Reg. 537 s.35(1) ■

DISCRETION

Other Index Terms: ONTARIO STUDENT ASSISTANCE PROGRAM

File Number: L1110-11

Date of Hearing: October 7, 1993

Presiding Member: H. Solomon

The Appellant received General Welfare Assistance as the spouse of a recipient. In January 1993 she received a grant from the Ontario Student Assistance Program to enable her to attend a business college. In view of this, the family's assistance was cancelled.

At the date of the cancellation, the Appellant had already started the program and, in order to ensure that her family would continue to receive assistance, she separated from her husband and her children to permit her husband to apply as a single person.

The Appellant's counsel ultimately conceded that the Appellant was ineligible for assistance. He submitted, however, that notwithstanding the fact that the Appellant was ineligible, the Administrator had the discretion to continue to provide assistance to the Appellant pursuant to subsection 10(2)(a) of the *General Welfare Assistance Act*.

The question before the Board was whether the power conferred on the Administrator under s.10(2) of the *General Welfare Assistance Act* was discretionary and whether it therefore gave the Administrator the authority to provide or continue assistance to people who are otherwise ineligible. Argument focused particularly on the meaning of the word "may" and on the nature of the power it conferred. Counsel for the Ministry requested that the Ministry of Community and Social Services be added as a party in view of the fact that the identical legal issue arises with respect to s.12(1) of the *Family Benefits Act*. The Board granted this request.

In the Board's view, s.7(1) of the Act, which is the threshold provision in the Act, makes eligibility a prerequisite for receiving assistance, and, given the extensive definition and analysis of eligibility within the Regulation, the purpose of the legislation is to ensure that General Welfare Assistance is paid to

GENERAL WELFARE ASSISTANCE ACT

persons in need who are eligible. The Board found it difficult to conclude that there is a residual discretion under s.10(2) for those who are found ineligible. Instead, any discretion to be found in the legislation is found within the numerous provisions where eligibility is determined.

Counsel for the Director also submitted several examples where a permissive interpretation of the word "may" would lead to inconsistencies. Most convincingly, s.8 of the *Family Benefits Act* allows for applications to the Lieutenant Governor in cases of ineligibility. Counsel pointed out, and the Board agreed, that this section obviates a need for discretionary power in s.12(a) of the *Family Benefits Act*. Since the Director can only do what is authorized by legislation, the Director cannot grant benefits to someone who is ineligible because this authority has been granted specifically to the Cabinet.

In the view of the Board, the word "may" may also be neither permissive nor imperative in construction, but simply empowering. Such a provision would empower a person with authority to do something which he or she would otherwise not have the power to do. In reviewing the context of the inclusion of "may" in s.10(2)(a) of the *General Welfare Assistance Act* the Board is of the opinion that this subsection merely empowers the Administrator to refuse to provide or cancel or suspend assistance where such power does not otherwise exist. The Board did not find any residual discretion to provide assistance or to refuse to cancel or suspend in the circumstances. **Appeal denied. Decision of the Administrator affirmed.** (17 pp; English)

REFERENCES: *Family Benefits Act* s.12(a), *General Welfare Assistance Act* s.10(2)(a); *Interpretation Act* s.29(1), s.29(2); O.Reg. 537 s.7(1), s.7(2); *Julius v. Bishop of Oxford* (1880), 5 App. Cas. 214; *R. v. Carleton* (1981), 69 C.C.C. (2d) 1; "may" ■

HEAD OF A FAMILY

Other Index Terms: CREDIBILITY

File Number: L1018-17

Date of Hearing: January 7, 1993

Presiding Member: M. McCormick

In 1992 the Appellant's husband received General

Welfare Assistance for himself, the Appellant and their two children. The husband was subsequently accepted into a university program in another city, a course of study not approved by the Administrator. He had been advised previously by a welfare worker that his family would no longer be eligible for assistance if he attended university. Nevertheless he began university in January 1993, and his assistance was cancelled. His wife, the Appellant, applied for assistance as a head of a family whose spouse is absent. It was denied.

The Board agreed that the Appellant was the head of a family as she had charge of a household and had three children. The issue before the Board was whether her spouse was absent. Was the fact that her spouse resided in another city sufficient to support a finding that he was "absent" within the meaning of the legislation?

The word "absent" is not defined in the legislation, but according to dictionaries its ordinary meaning is "not present". Previous decisions of the Board have considered this question and have made distinctions between voluntary and involuntary absence, finding that involuntary absence was acceptable. The Board rejected this test, determining that the word "not present" can apply to both types of absence.

In the present case, the Board found that the Appellant's spouse was absent in the ordinary sense of the term. However, in the Board's view, although subsection 1(2)(b) may apply to a voluntary absence, it does not apply to a case where the parties deliberately arrange their lives in order to qualify for assistance; this would be contrary to the spirit and intent of the legislation.

The purpose of General Welfare Assistance is to aid persons who are in need. The test is an economic one that does not make moral judgments. Nevertheless, in the Board's opinion, one of the themes which runs throughout the legislation is that parties have a positive obligation to ensure that they are not persons in need or to minimize the amount of assistance that they might require. Keeping this in mind, in the Board's view, the definition of "person in need" in s.1(2)(b) would not apply when a voluntary absence is deliberately arranged in order to qualify for assistance.

In the present case there was little documentary evidence and the credibility of the witnesses became an important issue. The testimony of the Appellant and the welfare worker were often in conflict. In the view of

the Board, the Appellant was not a credible witness. She was unable to provide answers to many questions and became confrontational when questioned. She denied making telephone calls and attending meetings which were on the record. When she applied for assistance as head of a family, she used a name that suggested an attempt to mislead the worker as to her identity.

In contrast, the Board found the welfare worker to be a credible witness who presented evidence in a sincere and straightforward manner and, where there were contradictions, the Board preferred the testimony of the welfare worker. Based on these findings of credibility, the Board found that the Appellant knew that her husband was planning to attend university and was a party to the decision; the Board rejected the suggestion that there had been a marital breakdown.

The Board concluded that this deliberate manipulation had a negative impact on the Appellant's eligibility. The *General Welfare Assistance Act* is not a guaranteed income system. It is remedial legislation designed to assist eligible persons. In the Board's view, it is contrary to the intent of the legislation that persons can deliberately arrange their lives in order to make themselves eligible for assistance. **Appeal denied. Decision of the Administrator affirmed. Appealed to the Divisional Court, file number 762/93.** (7 pp; English)

REFERENCES: O.Reg. 441 s.1(2)(b); "absent" ■

LIQUID ASSETS

File Number: M0815-17
Date of Hearing: April 28, 1994
Presiding Member: O. Quamina

The undisputed evidence at the hearing was that the Appellant owned four rifles and one shot gun. Three of the guns were inoperative and had no market value. He used the remaining two for hunting. The Administrator determined that these guns were assets and had a total value in excess of the allowable limit. The Appellant provided an estimate, more than three years old, which valued these guns at a total of \$550. The estimate did not attempt to establish their true market value.

There was no reliable evidence regarding the value of the guns and the Board was not satisfied that the

estimate provided by the Appellant and relied on by the Administrator was credible. Nor was there evidence that the Appellant was either a gun salesman, dealer, or collector. Therefore the Board rejected the argument that these guns were assets. In the view of the Board, the fact that the Appellant might occasionally find part of his food supply through hunting should not be regarded as a substitute for or the equivalent of the basic necessities available to him through General Welfare Assistance. **Appeal granted. Decision of the Administrator rescinded.** (3 pp; English)

REFERENCES: none ■

ONUS

Other Index Terms: ADJOURNMENTS; FAILURE TO PROVIDE INFORMATION

File Number: M1027-05
Date of Hearing: May 3, 1994
Presiding Member: M. McCormick

The Appellant's counsel appeared but the Appellant himself failed to attend the hearing, although he had been given six weeks' notice of the hearing date and had made a commitment to attend. The Appellant's lawyer could not provide an explanation and requested an adjournment. As the case had also been adjourned on an earlier occasion, the Board refused the adjournment.

One issue in this appeal was whether the case should be dismissed for failure to present a *prima facie* case. The Appellant had received General Welfare Assistance for a number of years and had declared ownership of a maximum of one vehicle at any time. The Administrator had received information from the Ministry of Transportation indicating that the Appellant owned five vehicles and also had eight unattached plates in his name. The Administrator requested verification of which cars and plates were inactive, documentation concerning their disposal, and information about any income received from the sale of vehicles. No information had been received from the Appellant.

The Appellant's lawyer questioned why the Administrator did not attempt to discover the name of the current owner of each vehicle and submitted that the onus was not on the Appellant to provide

GENERAL WELFARE ASSISTANCE ACT

information on every car that he owned. He further argued that the Administrator's evidence which showed that the Appellant had several plates in his name did not prove that the Appellant owned more than one vehicle.

The Board did not accept this argument. The legislation requires that the Administrator take liquid assets into account when determining eligibility, but in this case the Administrator was unable to do so because of a lack of information. In the Board's view it is practical and logical to request this information from the Appellant, who had personal knowledge of the vehicles and plates he owned, and it is an individual's obligation to establish eligibility. The Board concluded that the Administrator had presented a *prima facie* case.

The Board received no evidence from the Appellant on the issue of whether he had failed to provide information; therefore, the Administrator's written submission was accepted, and the Board concluded that the Appellant failed to provide information that was required in order to determine eligibility.

REFERENCES: *General Welfare Assistance Act* s.10(2)(b) ■

PAYMENTS RECEIVED

Other Index Terms: CREDIBILITY

File Number: M1116-41

Date of Hearing: September 13, 1994

Presiding Member: E. Novac

The Appellant was a 50-year-old single man who had worked as an independent truck driver for 28 years. He owned his own vehicle and his work consisted of short hauls. When he returned to work after suffering a heart attack, the Appellant was required to make long-haul deliveries. Because his truck was not suitable for long-distance travel, he traded it in on a larger vehicle. His monthly payments on the new vehicle were \$964 US.

Because of his heart condition and the fact that his driver's licences were later suspended, the Appellant was unable to make his monthly payments and the finance company threatened to repossess the truck.

During a trip to the United States, the vehicle broke down and required repairs that the Appellant could not afford.

The Appellant then "sold" the vehicle to a man who paid the arrears to the finance company and agreed in writing to take over all subsequent instalments in consideration of the sale. According to the contractual arrangement, the purchaser gained immediate possession of the vehicle and made the payments to the finance company directly but would not receive title to the vehicle until the final payment was made. Possession of the vehicle would revert to the Appellant only if the purchaser defaulted.

The Appellant testified that he entered into this agreement rather than selling the vehicle outright because the vehicle required major repairs and the likelihood of selling it for the amount that he owed was unlikely. This would also protect his credit rating and make it possible for him to find work again in the future.

The Administrator, however, suggested that the vehicle had been sold because the Appellant's drivers licences had been suspended, combined with the fact that he did not like long-haul deliveries. Although the Board did not necessarily disagree with the Administrator's interpretation, the Administrator's interpretation did not specifically explain why the Appellant entered into the contractual arrangement, rather than selling the vehicle outright. The Board therefore preferred the Appellant's explanation.

In the view of the Board, the Appellant did not have possession of the vehicle and, in the sense that he could not compel the purchaser to direct the payments to him personally, he had no control over the payments. Having only bare legal title to the vehicle, in the Board's opinion, the Appellant derived merely a diminishing benefit from the payments made by the purchaser. Considering this diminishing interest in and benefit from the vehicle, the Board concluded that the payments made by the purchaser were not income until such time as the Appellant should regain possession of the vehicle through the default of the purchaser.

Appeal granted. Decision of the Administrator rescinded. (6 pp; English)

REFERENCES: O.Reg. 537 s.15(2)(3) ■

RESIDENCE**File Number:** M0829-06**Date of Hearing:** May 4, 1994**Presiding Member:** M. McCormick

The Appellant was denied convention refugee status but was not taking any further action to appeal this denial. As he had never received a deportation order or a departure order, he was not ineligible for assistance pursuant to subsection 7(7) of Regulation 537.

By physically living in the municipality, he had been a resident of the municipality in the plain, common sense meaning of the word "resides". However, in previous decisions the Board has held that being a resident means more than having a physical presence in the municipality and an intent to remain in Canada. There must also be evidence that the intent to remain is not unrealistic, in the sense that the person must have some right to remain and be actively asserting that right.

In this case the Board found that the Appellant's intent to remain in Canada was unrealistic. He had no right to continue to reside in Canada and was not taking any appeal procedure to establish such a right. Therefore the Board concluded that the Appellant was not a resident of the municipality and was not eligible for assistance. **Appeal denied. Decision of the Administrator affirmed.** (4 pp; English)

REFERENCES: O.Reg 537 s.7(7) ■**SELF-EMPLOYED****Other Index Terms:** HEAD OF A FAMILY**File Number:** M1231-14**Date of Hearing:** August 3, 1994**Presiding Member:** C. Cardinal

The Appellant worked part-time, earning between \$160 and \$190 per week. Her spouse had been working for a contractor for a number of years, installing aluminum and vinyl siding and windows. In 1994 the contractor declared bankruptcy. The Appellant's spouse then remained at home to care for their two young children while continuing to look for work. The Appellant applied for General Welfare Assistance and it was denied on the grounds that her spouse was self-employed, an employable person, and the head of a family whose spouse was not absent. The

Appellant was also found ineligible on the grounds that she was not the head of her family and her spouse was responsible for giving her financial support.

The first issue was whether the Appellant's spouse was a self-employed person. The Board noted that over the years the courts have developed three tests for determining self-employment and that because modern work relationships have become more complex the courts now combine the three tests to analyse the relevant factors in the work relationship.

The *control test* centres on who has the right to control the employee's performance of the work. In the case of the Appellant's spouse the contractor maintained the right to control how the work was done; if it were not done to the contractor's specifications, the installer had to redo the work.

The *four-fold test* incorporates the control issue but also looks at the worker's ownership of tools and the worker's opportunities for profit and risk of loss. In the present case the Appellant's spouse provided his own truck and tools. He did not profit from the installation as he was paid a fixed amount of money for the job regardless of the time needed. He risked loss only if he did not do the installation properly.

The *organizational test* explores whether the services rendered by the worker are so essential to the business that the worker is economically dependent on the one company. In such cases the worker is usually regarded as an employee or a dependent contractor. In the Appellant's spouse's situation, the contractor depended on the installers for part of his income and would not have been able to operate without them. The Appellant's spouse was economically dependent on this one company.

After applying these tests carefully, the Board was of the view that the Appellant's spouse was a dependent contractor rather than a self-employed person. Since the Administrator had considered the Appellant's spouse to be the head of the family, he was not precluded from being eligible because of being self-employed.

The Board noted that the Administrator could also have considered the application for assistance under paragraphs (a) and (b) of subsection 4(1) of the Regulation. At the time of application, the Appellant and her spouse were persons in need and her spouse

GENERAL WELFARE ASSISTANCE ACT

continued to search for work throughout his time of unemployment. Moreover, the Administrator could also have considered the eligibility of the Appellant's spouse under paragraph (d) for subsection 4(1) of the Regulation because he remained at home to look after the children.

Although it had been the Appellant's caseworker who suggested that she be the person to apply, the Appellant herself had been denied assistance on the grounds that she was not the head of the family. The Board did not agree. Because the Appellant's spouse was dependent on her for support and maintenance while he was unemployed, the Appellant was the head of the family. In the view of the Board it is discriminatory to assume that the male adult is always the head of the family.

Appeal granted. Decision of the Administrator rescinded. (9 pp English; 9 pp French)

REFERENCES: O.Reg. 537 s.1(9) ■

SHELTER

File Number: M1218-36

Date of Hearing: November 22, 1994

Presiding Member: E. Novac

The Appellant began to receive General Welfare Assistance as a single, employable adult living in her mother's home. A few months later she and two of her sisters moved into a single family dwelling and shared the rent and utilities equally among themselves. All three women were recipients of General Welfare Assistance. Each one paid a total of \$294 for her share of rent and utilities.

The house that they rented was owned by, but was not the principal residence of, the Appellant's mother. After learning of this, the Administrator reduced the Appellant's assistance by the amount of her total shelter allowance. Because the Appellant was residing in a property under the direct control of her parent, the shelter portion of her needs was deemed to be "support in kind" as defined by subsection 15(1) of Regulation 537. The Administrator further supported this position by stating that this same point of view was currently being applied to sponsored individuals who lived in accommodations controlled by their sponsors.

In the opinion of the Board, the Administrator misinterpreted the intent and purpose of the legislation in this particular case. The fact that the Appellant paid

rent to her mother is not distinguishable from paying rent to any other landlord. The Appellant was an adult and there was no parental obligation to provide support or cover the cost of shelter. If shelter costs are legitimate and fall within the meaning of the legislation then assistance must be paid to meet those costs, subject to the ceiling stipulated by the legislation. In the view of the Board, it is that ceiling which protects the province from abuse. In the present case the Appellant's shelter costs were more than reasonable.

The Board further noted that s.15(2)(9) of the Regulation applies to persons in respect of whom an undertaking under the *Immigration Act* has been given. The intent of this provision is to hold sponsors at least partly responsible for the budgetary requirements of the person they sponsored to immigrate to Canada, rather than obliging the social welfare system to bear all of these costs. In this case the Appellant was not a sponsored individual and her mother was not a sponsor. Therefore, in the Board's opinion, the Administrator erred in drawing an analogy between this case and those cases dealing with sponsorship. **Appeal granted. Decision of the Administrator rescinded.** (6 pp; English)

REFERENCES: O.Reg. 537 s. 13(1)(a), s.15(2)(9); "rent" ■

SPOUSAL DECLARATION

Other Index Terms: SPOUSE

File Number: N0209-23

Date of Hearing: November 2, 1994

Presiding Member: S. Roy

The Appellant and her fiancé had been living together in a common-law relationship for four months when they applied for General Welfare Assistance. The application was made in her fiancé's name, with the Appellant as his dependent spouse. Both of them signed a spousal declaration. However, because of her fiancé's unemployment insurance benefits, their income as a couple exceeded their entitlement and they were found to be ineligible.

The Appellant then sought legal assistance and discovered the significance of the signed spousal declaration. At the hearing, she submitted that it had been her intention to apply as a single person in a co-

resident situation. She testified that her fiancé just happened to accompany her to the welfare office. When the worker asked if they were living in a common-law relationship and they replied affirmatively, they were told that they must apply as a family.

The couple lived in a home that the fiancé had purchased. It was not jointly owned because the Appellant did not want the purchase of the home to be adversely affected by her previous financial history. They opened a joint bank account and joint safety deposit box, and the Appellant named her fiancé as the sole beneficiary of her life insurance. She paid half of the household expenses.

The Board concluded that they were not spouses according to the requirements of subsection 1(1) of the Regulation. They had no legal obligations to support each other, they did not have children, and they had not resided together continuously for a period of three years or more.

The question of the spousal declaration, however, was relevant. In the view of the Board, the testimony of the Appellant and her fiancé proved that they signed the spousal declaration without an understanding of its meaning and the impact it would have on their eligibility. During the interview with their caseworker, they had simply formed an understanding that signing the declaration was the only way of obtaining assistance. The worker did not explain to the Appellant that her fiancé had no legal obligation to support her until they had either resided together continuously for three years or had a child together. The signing of the spousal declaration was not therefore, in the Board's opinion, fully voluntary, nor was it an informed decision.

In his submission, the Administrator also relied on certain indicators of an economic, social, or familial relationship that was like that of spouses. The Board wishes to point out that such indicators constitute relevant evidence only when the dispute is about whether individuals who have resided together for three years are, in fact, spouses. **Appeal granted. Decision of the Administrator rescinded.** (8 pp; English)

REFERENCES: O.Reg. 537 s.1(1)(a); *General Welfare Policy Guidelines* #0303-08 ■

SPOUSAL DECLARATION

Other Index Terms: SPOUSE

File Number: M1203-06

Date of Hearing: November 22, 1994

Presiding Member: B. Allen

The Appellant had received assistance as a single person since 1991. She began residing with her boyfriend in March of 1992. They became formally engaged and planned to be married on September 24, 1994, and from that time forward they referred to one another as fiancés.

The Appellant visited the department, alone and in person, to inform her worker that she had become engaged. Her worker did not question this and led the Appellant to believe that her entitlement status would not change. The Appellant was not required to put this information in writing or to formally swear to the truth of it.

In mid-January 1994, the Appellant advised the department that she planned to be married in March 1994 and would no longer need assistance after her marriage. The Administrator cancelled her assistance effective January 31, 1994. The Appellant argued that she was eligible for assistance for the month of February 1994, since she was not living as the spouse of her fiancé until the date of their marriage.

Subsection 1(1)(a) of Regulation 537 sets forth the definition of "spouse" for the purposes of General Welfare Assistance. Subsection (b) and (c) clearly did not apply. Subsection (d) did not apply because the Appellant had resided with her fiancé for only a two-year period before her allowance was cancelled.

The Board determined that subsection (a) also did not apply. This subsection requires that a joint declaration of a spousal relationship be made to the Administrator by both spouses. Moreover, while there is no requirement in the legislation that such a declaration be in writing, the Board is in agreement with the Administrator's policy of requiring a formal written declaration. In the view of the Board, there is great potential for misunderstanding the nature of a relationship if verbal declarations by one party are accepted. Moreover, because of the potential loss of rights or benefits resulting from such a declaration, a full explanation of the consequences must be given to a recipient. This did not happen in this case.

GENERAL WELFARE ASSISTANCE ACT

The Board concluded that subsection 1(1)(a) of the definition under the Regulation did not apply to the facts of this case. **Appeal granted. Decision of the Administrator rescinded.** (5 pp; English)

REFERENCES: O.Reg. 537 s.1(1)(a); *General Welfare Policy Guidelines* #0303-08 ■

PART III

DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

DISABLED PERSON

File Number: L0413-38

Date of Hearing: February 4, 1994

Presiding Member: L. Bradbury

The Appellant was a 38-year-old woman who was congenitally deaf. Following her education, she worked for many years performing data entry duties with various companies. Beginning in 1987, she began taking courses that would prepare her for teaching the deaf and did part-time teaching in various places while maintaining her data entry job. In 1991, she took a one-year leave of absence from this job to work with deaf students at a community college. She testified that following this leave of absence, she decided not to return to her job and became determined to pursue a career as a teacher of the deaf. In order to do so she required a Bachelor of Arts degree from an American university. She testified that she had already met the entrance requirements for the program but could not afford to attend it without assistance. She therefore applied for Vocational Rehabilitation Services as a disabled person. Her application was denied on the grounds that she was not "incapable of pursuing regularly any substantially gainful employment".

In coming to its decision in this case, the Board carefully reviewed the case law on the subject and concluded that the Appellant was a disabled person. In

the Board's view, three relevant principles emerge from an analysis of these cases.

First, in the opinion of the Board, the *Meckler* case established that VRS is designed to assist disabled persons both to enter the workforce and to change their classification within the definition of "substantially gainful employment" set out in subsection 1(2) of Regulation 943. An applicant, for example, could receive assistance to become capable of the "practice of a profession" or "self-employment". The Board did not agree with the Director's argument that the legislation restricts the Appellant to pursuing her data entry work.

In the Board's view, appropriate circumstances existed in the present case for the Appellant to obtain assistance to make a career move. The Appellant's request did not represent a sudden career change but had been carefully developed and considered for a period of time and the Appellant had undergone a long period of preparation.

Second, the Court in the *DeBoni* case, in the Board's view, established that when evaluating "optimum capacity" it is necessary to take into consideration subjective factors such as an applicant's abilities and interests. It is not, however, necessary to provide services to help applicants develop their abilities to their "ultimate potential" which is, in the opinion of the Board, more in the nature of a final, ideal goal rather than an actual possibility or opportunity.

In the present case the Appellant had clearly demonstrated an ability for and success in teaching. The Board concluded that she would therefore be capable of operating at her optimum capacity in that profession. The Board further concluded that the services needed to help the Appellant reach her goal of becoming a teacher could not be considered to be helping her to achieve her "ultimate potential".

Third, although the principle has not been articulated explicitly by the courts, a review of the cases indicates that the issue of whether or not the applicant has already been assessed and granted Vocational Rehabilitation Services is also to be considered. In the present case, the Appellant had not previously requested or received VRS assistance. She had funded her own education and the beginnings of her new career.

Finally, the Board enquired whether the definition of "substantially gainful occupation" in the Regulation is limited by the word "any" in s.1(b) of the Act and whether that would prevent the Appellant from upgrading her skills. The Board concluded that the word "any" could not be given its literal meaning and did not limit the definition. **Appeal granted. Decision of the Director rescinded.** (12 pp; English)

REFERENCES: *Vocational Rehabilitation Services Act* s.1(b); O.Reg. 943 s.1(2); *DeBoni v. Director of Vocational Rehabilitation Services* (unreported, Div. Ct., May 11, 1978); *Director of the Vocational Rehabilitation Services Branch of the Ministry of Community and Social Services v. Meckler* (1980), 27 O.R. (2d) 500 (Div. Ct.); *Lawson v. the Director of the Vocational Rehabilitation Services Branch of the Ministry of Community and Social Services for Ontario* (1982), 140 D.L.R. (3d) 466 (Div. Ct.), *Re Mroszkowski and Director of the Vocational Rehabilitation Services Branch of the Ministry of Community and Social Services* (1978), 20 O.R.(2d) 688 (Div. Ct.), *Director of VRS Branch v. Sara Pecchia* (unreported, Div. Ct. November 23, 1992), *Souter v. Director, Vocational Rehabilitation Branch* (unreported, Div. Ct., September 12, 1978), "optimum capacity", "substantially gainful occupation" ■

GOODS, ALLOWANCES OR SERVICES

File Number: N0218-35

Date of Hearing: October 4, 1994

Presiding Member: S. Roy

The Appellant was a married man who had three children. He had sustained a spinal cord injury when he fell from a roof. His vocational goal was to work as the primary homemaker in his home. This was approved and the Director approved extensive renovations to the Appellant's home and van to accommodate his wheelchair. The director did not approve a lift to the basement, a ramp for a second exit from the home, or a cellular telephone for the van. The denial of these goods and services was the subject of this appeal.

The Appellant argued that a substantial portion of his homemaking responsibilities were unmet because he was unable to go into the basement. The electrical circuit breaker system was located there and should the power go off when he was home alone he would be

without electricity until he was able to summon help or until his wife or children returned home. His children spent much of their time in the basement recreational room where the Appellant was not able to supervise them or make sure that the area was clean and tidy. He also submitted that he was unable to make repairs to the home or to his wheelchair in winter because his work bench was in the basement. He made such repairs in the garage in summer.

The question before the Board was whether the Appellant was capable of exercising his homemaking obligations without access to the basement. In reviewing the evidence before it, the Board found that although the Appellant did not have access to the basement, the extensive modifications previously made to his home did permit him to maintain himself as the primary homemaker.

Regarding the electrical circuit breaker system, VRS had offered to relocate the system to the main floor and at the hearing the Appellant agreed to consider the option.

Regarding child supervision and cleaning of the basement, the Board determined that the Appellant's children, aged 15, 11 and 5, did not require continuous close supervision. The Board suggested that, if necessary, the eldest could supervise the youngest when they were in the basement or the Appellant could ask them to remain upstairs until his wife returned home from work. The Board further suggested that it would be reasonable for the children to share responsibility for keeping their play area tidy. The Appellant had testified that he was able to enter the basement from time to time with assistance and the Board was of the opinion that the occasional visit from the Appellant or his wife would be sufficient supervision.

The Appellant further testified that he did regular cleaning and lubricating of his wheelchair upstairs year round, therefore the Board concluded that lack of access to the workbench in the basement in winter did not hamper him unduly.

The Appellant also requested a ramp from an existing kitchen door to serve as a second exit to his home. He testified that his only means of going in and out was by using the electrically-powered lift. This lift could be operated manually in the event of a power failure but required the efforts of two people. As the Appellant's wife worked outside the home and the children

VOCATIONAL REHABILITATION SERVICES ACT

attended school, he was alone much of the time and had concerns about his safety in the event of fire.

The Director had denied the request for a second exit on the basis that the *Building Code* does not require a second exit to a house with fewer than 10,000 square feet and that the *Fire Act* also states that only one exit is required in the Appellant's home.

It appeared to the Board that at times when the electricity might be off the Appellant's home did not meet the safety standards of either the *Fire Act* or the *Building Code* in regard to the Appellant. In the Board's opinion, modifications to the home had been initially approved in order to give the Appellant a degree of mobility and independence. These would be taken away from him when the electricity was off. The Board therefore ordered the Director to determine the best mode of ensuring that a second exit, which guaranteed the Appellant's safety, be provided. Finally, the Appellant requested a cellular telephone for his van so that he could make long-distance telephone calls in

case of emergencies. He had had an experience where he was unable to exit from his van because it was parked on a narrow shoulder of the highway and he could not summon help. The Board accepted the Director's submission that the route to the downtown area, where the Appellant did his shopping, banking and so on, had a heavy flow of traffic and that assistance would be readily available to him should the need arise. In the Board's view, the Appellant failed to demonstrate the necessity of travelling outside the city to perform his homemaking duties. **Decision to deny the request for a lift affirmed; decision to deny the request for a cellular telephone affirmed; decision to deny the request to provide a second entrance to the home for emergency purposes rescinded.** (13 pp; English)

REFERENCES: O.Reg. 943 s.1(2)(d); *Re De Boni and the Director of Vocational Rehabilitation Services Branch of the Ministry of Community and Social Services*, (unreported, 1978) ■

CUMULATIVE INDEX

This index includes cases published in Volume 4 of
SUMMARIES OF DECISIONS

PART I: DECISIONS UNDER THE FAMILY BENEFITS ACT

ASSIGNMENT

M1223-50
Volume 4 May 1995 p. 7

AVAILABLE FINANCIAL RESOURCE

M0429-31
Volume 4 May 1995 p.11

CO-RESIDENCE

L1028-20
Volume 4 May 1995 p.10

DISABLED PERSON

M1202-62
Volume 4 May 1995 p. 8

EVIDENCE

M1012-39
Volume 4 May 1995 p. 9

FAILURE TO PROVIDE INFORMATION

M0429-31
Volume 4 May 1995 p. 11

INTERIM ASSISTANCE

M0219-20
Volume 4 May 1995 p. 8

JURISDICTIONAL ISSUES

M0219-20
Volume 4 May 1995 p. 8

LIQUID ASSETS

M1202-62
Volume 4 May 1995 p. 8

OVERPAYMENTS

M0219-20
Volume 4 May 1995 p. 8

M1223-50
Volume 4 May 1995 p.7

PERMANENTLY UNEMPLOYABLE PERSON

M1012-39
Volume 4 May 1995 p. 9

SPONSORED DEPENDANT OR NOMINATED
RELATIVE

M0715-02
Volume 4 May 1995 p. 9

SPOUSE

L1028-20
Volume 4 May 1995 p.10

TRUSTS

M0429-31
Volume 4 May 1995 p.11

**PART II: DECISIONS UNDER THE
GENERAL WELFARE ASSISTANCE ACT**

ADJOURNMENTS

M1027-05
Volume 4 May 1995 p.15

COMMUNITY START-UP

M0221-15
Volume 4 May 1995 p.12

CREDIBILITY

L1018-17
Volume 4 May 1995 p.14

M1116-41
Volume 4 May 1995 p.16

DISCRETION

L1110-11
Volume 4 May 1995 p.13

FAILURE TO PROVIDE INFORMATION

M1027-05
Volume 4 May 1995 p.15

HEAD OF A FAMILY

L1018-17
Volume 4 May 1995 p.14

M1231-14
Volume 4 May 1995 p.17

LIQUID ASSETS

M0815-17
Volume 4 May 1995 p.15

ONTARIO STUDENT ASSISTANCE PROGRAM

L1110-11
Volume 4 May 1995 p.13

ONUS

M1027-05
Volume 4 May 1995 p.15

PAYMENTS RECEIVED

M1116-41
Volume 4 May 1995 p.16

RESIDENCE

M0829-06
Volume 4 May 1995 p.17

SELF-EMPLOYED

M1231-14
Volume 4 May 1995 p.17

SHELTER

M1218-36
Volume 4 May 1995 p.18

SPOUSAL DECLARATION

M1203-06
Volume 4 May 1995 p.19

N0209-23
Volume 4 May 1995 p.18

SPOUSE

M1203-06
Volume 4 May 1995 p.19

N0209-23
Volume 4 May 1995 p.18

**PART III: DECISIONS UNDER THE
VOCATIONAL REHABILITATION
SERVICES ACT**

DISABLED PERSON
L0413-38
Volume 4 May 1995 p.20

GOODS, ALLOWANCES OR SERVICES
N0218-35
Volume 4 May 1995 p.21

**REFERENCES TO STATUTES
AND REGULATIONS**

Family Benefits Act

12(a) L1110-11
Volume 4 May 1995 p.13

14(2) M0219-20
Volume 4 May 1995 p. 8

17 M0219-20
Volume 4 May 1995 p. 8

General Welfare Assistance Act

10(2)(a) L1110-11
Volume 4 May 1995 p.13

10(2)(b) M1027-05
Volume 4 May 1995 p.15

Interpretation Act

29(1) L1110-11
Volume 4 May 1995 p.13

29(2) L1110-11
Volume 4 May 1995 p.13

Regulation 366

1(3) L1028-20
Volume 4 May 1995 p.10

3(1)(b) M0429-31 May 1995 p.11

6(2) M1202-62
Volume 4 May 1995 p. 8

13(2)10 M0715-02
Volume 4 May 1995 p. 9

13(2)10.1 M0715-02
Volume 4 May 1995 p. 9

13(15) M0715-02
Volume 4 May 1995 p. 9

13(16) M0715-02
Volume 4 May 1995 p. 9

13(17) M0715-02
Volume 4 May 1995 p. 9

Regulation 441

1(2)(b) L1018-17
Volume 4 May 1995 p.14

Regulation 537

1(1)(a) N0209-23
Volume 4 May 1995 p.18
M1203-06
Volume 4 May 1995 p.19

1(9) M1231-14
Volume 4 May 1995 p.17

4(3)(b) M0429-31
Volume 4 May 1995 p.11

7(1) L1110-11
Volume 4 May 1995 p.13

7(2) L1110-11
Volume 4 May 1995 p.13

7(7) M0829-06
Volume 4 May 1995 p.17

13(1)(a) M1218-36
Volume 4 May 1995 p.18

15(2)(3) M1116-41
Volume 4 May 1995 p.16

15(2)(9)
M1218-36
Volume 4 May 1995 p.18

35(1)
M0221-15
Volume 4 May 1995 p.12

Regulation 943

1(2)
L0413-38
Volume 4 May 1995 p.20

1(2)(d)
N0218-35
Volume 4 May 1995 p.21

Trustee Act

36(6)
M0429-31
Volume 4 May 1995 p.11

Vocational Rehabilitation Services Act

1(b)
L0413-38
Volume 4 May 1995 p.20

REFERENCES TO MANUALS

General Welfare Policy Guidelines

Policy 0303-08
N0209-23
Volume 4 May 1995 p.18
M1203-06
Volume 4 May 1995 p.19

DEFINITIONS

absent

L1018-17
Volume 4 May 1995 p.14

allowance

M0219-20
Volume 4 May 1995 p. 8

may

L1110-11
Volume 4 May 1995 p.13

optimum capacity

L0413-38
Volume 4 May 1995 p.20

rent

M1218-36
Volume 4 May 1995 p.18

residing in the home of

M0715-20
Volume 4 May 1995 p. 9

substantially gainful occupation

L0413-38
Volume 4 May 1995 p.20 ■

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**SOCIAL
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**BULLETIN and
SUMMARIES OF
DECISIONS**

Volume 5:1

August 1995



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Summaries of Decisions is a collection of summaries of selected decisions of the Board. It is published four times per year and is distributed free of charge. Instructions for obtaining copies of the decisions summarized in each issue appear on the last page of this publication.

ORGANIZATION

This publication is divided into three parts. Part I contains summaries of decisions that relate to the Family Benefits Act. Part II contains summaries of decisions relating to the General Welfare Assistance Act, and Part III contains summaries of decisions relating to the Vocational Rehabilitation Services Act.

Each decision summarized in this publication is assigned a number of different index terms which reflect its content. The summaries appear under the one heading which best expresses the most noteworthy issue under discussion in each decision. This heading is in **BOLD** type at the beginning of each summary. These headings are arranged in alphabetical order within Part I, Part II, and Part III.

Other index terms which apply to a decision are listed separately to provide a further indicator of content.

Example:

CATEGORICAL ELIGIBILITY

**OTHER INDEX TERMS: JOINT CUSTODY; RECONSIDERATIONS;
SINGLE PARENT WITH DEPENDENT CHILDREN**

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The disposition of the case, the number of pages in the full-text version of the decision, and the language in which the decision was written appear as the last sentence in the summary. Certain decisions have both an English and French language version available.

Example:

Appeal denied. (16 pp English; or 18 pp French)

REFERENCES

These references are to documents and authorities considered in and commented on in some detail by the Board in its findings. They are further indicators of the relevance of the decision. The list may include, in this order: federal and provincial statutes, regulations, cases, books, treatises, and manuals. Terms whose meanings are discussed in a significant way appear in quotation marks at the end of the list.

Example:

General Welfare Assistance Act s.7(1); Re Richardson and the Commissioner of Metropolitan Toronto Department of Social Services (1988), 46 O.R. (2d) 63; "reside"

CUMULATIVE INDEX

A cumulative index to this publication is included with each issue. Use it to find summaries of decisions on specific subjects of interest to you.

References to summaries in the current issue are integrated with references from preceding issues in this list. Therefore, the most recent index can also be used to find decisions summarized in previous issues. KEEP YOUR BACK ISSUES FOR FUTURE REFERENCE. At the beginning of each volume we will begin a new index.

The cumulative index is divided into the same three parts as the rest of the publication. Part I of the index refers to the Family Benefits Act. Part II refers to the General Welfare Assistance Act, and Part III to the Vocational Rehabilitation Services Act.

The index is arranged in alphabetical order by subject within each of the Parts. Each decision appears under several different index terms to provide a detailed guide to its content. Note that headings are of many different types. Factual, procedural, and conceptual terms are used and the names of statutes or programs may also appear as index terms.

Example:

| | |
|--|--------------|
| DRUG BENEFIT | (factual) |
| EXTENSION OF TIME | (procedural) |
| ONUS | (conceptual) |
| <u>CANADIAN CHARTER OF RIGHTS AND FREEDOMS</u> | (statute) |
| S.T.E.P. | (program) |

The index terms are upper case. The line below shows the File Numbers of all of the

HOW TO USE THIS PUBLICATION

decisions which contain information on these subjects.

Example:

EXTENSION OF TIME

H0321-05

Volume 2:3 OCT 1992 p.5

Information under the File Number shows where that particular summary originally appeared in our publication. The issue number and date and the page number are provided. ■

.....

.....

.....

FAMILY BENEFITS ACT

Director submitted that the Appellant could not be deemed to be responsible for an equal share of the shelter because she was not a part owner of the condominium.

In this case the Board was satisfied with the definition of "shared accommodation" in the policy guidelines, but was of the opinion that the Director had misinterpreted the policy in this case. The Board was of the view that the Appellant's situation at her new residence should continue to be considered as shared accommodation. The fact that her sisters owned the apartment did not affect her relationship with the other residents or the responsibilities connected with the premises. **Appeal granted. Decision of the Director rescinded.** (7 pp; English)

REFERENCES: O.Reg. 366 s.41(1); "shared accommodation" ■

PAYMENTS RECEIVED

Other Index Terms: CASUAL GIFTS

File Number: N0322-06

Date of Hearing: January 18, 1995

Presiding Member: D. Heath

The Appellant received an allowance as a sole-support parent with two dependent children.

A court order enforcing a new settlement between the Appellant and his former wife was issued. The judge ordered that the wife could deduct her out of pocket expenses for their daughter's dental costs. The Appellant testified that because his wife had a dental plan available to her through her employment he did not use the dental care offered through Family Benefits. The dental expenses were to cover the cost of braces for the child. The

Appellant also referred to piano lessons that his spouse had been given permission to deduct. The payment was made directly to the piano teacher. These lessons were later discontinued. The Director's position was that the money for piano lessons and dental expenses was income, because it was considered to be payment in kind.

The Board did not agree. In the view of the Board the terms of a divorce settlement rarely take into consideration their effect on social assistance payments. When the Appellant signed the divorce settlement he agreed to what the judge had ordered, and was under the understanding that the dental costs would have no direct effect on his income budget. The Board accepted that the Appellant had no control over the arrangements for dental work made by the court, and that the fact that dental coverage was provided by the spouse's dental plan was also a savings to Family Benefits.

Finally, the Board examined the effect on the Appellant's budgetary requirements of considering these to be payments. They were of mutual benefit to one of the Appellant's children and to the Appellant's former wife; moreover, the Appellant could not use them to meet the family's basic needs. To consider them as support would distort the meaning of "support" within the *Family Benefits Act*.

Should one family member benefit to a greater extent than the others? The Board could not support this interpretation. The Board considered the hypothetical situation where the person providing support was successful in paying \$2,000 per month to one of the dependent children. Following the Director's line of reasoning, this would render the entire family ineligible.

Regarding the piano lessons, which cost \$10

per week, the Board accepted the argument that the money paid directly to the piano teacher should be considered a casual gift. In the Board's view, it was no different from a weekly allowance that most children receive. To consider a child's weekly allowance as income would be unusually harsh. **Appeal granted. Decision of the Director rescinded.** (8 pp; English)

REFERENCES: O.Reg. 366 s.13(2)(7), s.13(2)(27) ■

PART II

DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

ADJOURNMENTS

Other Index Terms: FRAUD

File Number: N0411-20

Date of Hearing: February 14, 1995

Presiding Member: S. Clement

The Appellant requested an adjournment of her hearing to another date. There were two reasons for the request. First, criminal charges of fraud had been served on the Appellant. Second, legal counsel had just been retained and did not have enough time to prepare submissions on behalf of the Appellant. The Administrator did not object to the adjournment but did express concern about the possibility of interim assistance being granted during the adjournment period.

The Board noted that its practice directives with respect to adjournments are based on principles which were established by the Divisional Court. These principles are that the Board has the power to determine whether or not to grant an adjournment, that there is no right to an adjournment where notice is adequate, and that an adjournment policy must not be applied mechanically.

In this case, the Board found that notice was adequate but had regard to the fact that there was insufficient time for legal counsel to prepare the required submissions. In the view of the Board, however, the fraud charges did not in themselves constitute a reason for granting an adjournment. The fact that the criminal and administrative proceedings arose from the same situation did not justify an adjournment of the administrative proceedings. The courts have held that, in most cases, the rights which an accused person has will not be violated if that person is compelled to go ahead with the administrative proceeding.

The Board also considered the question of whether an adjournment is necessary to protect the accused's right to a fair trial in relation to derivative evidence. In *Thomson Newspapers Ltd. et al. v. Director of Investigation & Research et al* the Supreme Court held that the use of derivative evidence in a subsequent criminal trial does not necessarily violate the principles of fundamental justice, because the accused may always request the trial judge to exclude the evidence.

Finally, the Board took into consideration the question of whether or not the Administrator would be prejudiced by the granting of the adjournment. As the only concern expressed by the Administrator was the possibility of interim assistance, the Board concluded that

GENERAL WELFARE ASSISTANCE ACT

the Administrator would not be prejudiced.
Adjournment granted. (6 pp; English)

REFERENCES: *Re Flamboro Downs Holdings Ltd. and Teamsters Local 879*, (1979), 99 D.L.R. (3d) 165 (Ont. Div. Ct.), *Seth v. Canada (Minister of Employment and Immigration)* (1994), 105 D.L.R. (4th) 365 (F.C.A.) *Thomson Newspapers Ltd. et al. v. Director of Investigation & Research et al* (1990), 67 D.L.R. (4th) 161 (S.C.C.). ■

AGE

File Number: N0721-49
Date of Hearing: March 22, 1995
Presiding Member: S. Roy

The Appellant applied for General Welfare Assistance as a 17-year-old person attending school. He testified that he had left his parents' home because he did not want to follow their rules and regulations. He then went to live with his cousin, who was also receiving social assistance. The cousin lived another town where there was a school that the Appellant had wanted to attend. He testified that his parents had refused to pay the \$2,000 needed to send him to this school and that this was another reason why he had left his parents' home. In cross-examination the Appellant confirmed that he otherwise enjoyed a good relationship with both of his parents.

In the Board's opinion, applicants who are less than 18 years of age must provide a compelling reason for receiving assistance in their own right. Based on the evidence before it, the Board found that there were no special circumstances in this case. In the view of the Board, General Welfare Assistance is not meant to enable a person under the age of 18 to live his life independently of his parents.

The evidence clearly demonstrated that the Appellant's problems resulted from his own behaviour and there was no reason for the Board to exercise its discretion in his favour.
Appeal denied. Decision of the Administrator affirmed. (4 pp; English)

LIQUID ASSETS

Other Index Terms: DISCRETION;
EVIDENCE

File Number: M0721-01
Date of Hearing: March 4, 1994
Presiding Member: M. Mercer

The Appellant had received General Welfare Assistance for the period of one year. After the death of her husband she received amounts of money totalling more than \$91,000 which she disposed of in a four month period. Much of this money was a lump sum which was paid to her as the beneficiary of her spouse's insurance policy. Other monies came from her spouse's bank accounts, his employee pension plan, family savings, and from loans made by a relative and a friend.

The Administrator submitted that the Appellant had assigned or transferred liquid assets for the purpose of qualifying for assistance because she used the money for non-essential things that would make her home more comfortable or for things which were not immediate necessities. She also gave a large amount of money to relatives to repay loans when it was not clear either that the loans existed or that they had to be repaid.

Of the \$91,000, the Board determined that \$75,000 were liquid assets. Of the \$16,000 remaining, \$5,200 was a debt, as the Appellant had borrowed money to make

mortgage payments, fix up her home and settle her spouse's estate. \$935 was not a liquid asset because this amount had been placed in a RRSP for a fixed term and could not therefore be readily converted into cash. Lastly, insurance monies were not payable to her but went directly to discharge a car loan.

Of the \$75,000, the opinion of the Board was that the consideration for the transfer of these amounts was adequate. Approximately \$10,000 was used for her spouse's funeral and for religious observations and ceremonies associated with her culture. For the amount of \$2,000 the Appellant eliminated part of a debt and kept the goodwill of a relative from whom she had borrowed money. At the time that she repaid this loan she was expecting to receive further insurance money and did not anticipate that she would need to apply for further General Welfare Assistance. \$13,600 was spent doing necessary repairs and renovations to her home to make it safe and habitable. In the view of the Board, the Appellant received goods and services to the value of the money she spent. The remainder was spent to eliminate debts to family members abroad, thereby maintaining goodwill.

Even though the consideration for the transfer of \$50,000 in liquid assets was adequate, the Board was of the opinion that the Appellant had made this transfer for the purpose of qualifying for assistance. The Board carefully considered submissions made on this point by the Appellant's legal representative. These were essentially that there were strong situational, psychosocial, cultural and religious motives for the Appellant's decision to transfer \$50,000 to her relatives and that she had acted without the intent to do this in order to qualify for assistance.

When the Appellant received the large lump

sum insurance payment, her relatives expected her to repay her late spouse's debts and their expectations were tied in with very strong cultural and religious beliefs which made her feel obligated to repay these debts. She therefore deposited this money into a separate bank account. When she reapplied for assistance she did not reveal that she had this bank account. The Board received the strong impression that the Appellant, who had previously received assistance, knew that she ought to have reported this, and that she had transferred the assets with the knowledge that she would be impoverishing herself.

The Board also considered whether it should use its discretionary power to determine whether she was eligible for assistance. Counsel for the Appellant submitted that the Appellant was not accustomed to handling financial affairs and that she had been treated for anxiety and depression after her spouse's death. Counsel also submitted that she was strongly compelled by her religious beliefs to give priority to the discharge of his debts.

In the view of the Board, the Appellant demonstrated that she had been able to cope with the situation, to seek help when needed, to straighten out her husband's affairs and to make necessary repairs to her home. While it was apparent to the Board that the Appellant was conflicted by competing needs, the forces that caused her to transfer the \$50,000 were not irresistible. **Appeal denied. Decision of the Administrator affirmed.** (9 pp; English)

REFERENCES: O.Reg. 537 s.6(1) ■

ONTARIO STUDENT ASSISTANCE PROGRAM

Other Index Terms: STUDENTS;
SHELTER

File Number: N0105-03

Date of Hearing: November 15, 1994

Presiding Member: M. Adams

The Appellant and his family were receiving General Welfare Assistance when the Appellant began to attend a community college. Because he received an Ontario Student Assistance Program loan the Appellant was made ineligible and his family's assistance was reduced.

The issue before the Board was whether the Administrator's policy of making a deduction from the Appellant's family's assistance was consistent with the requirements of section 7(2.1) of Regulation 534.

The method by which the Administrator deemed the Appellant ineligible was by deducting \$415 from the entire family's welfare entitlement. According to the Administrator this decision was made in accordance with regulation amendments and policy changes made in August of 1993, the purpose of which was to render students ineligible if they received student loans. If, however, the student was a member of a family unit, the family continued to be eligible for assistance.

In the present case, the \$415 deduction consisted of the basic needs portion of one adult in a two adult family budget, which is \$355. The minimum roomer charge of \$60 was also deducted, to reflect the other shelter costs the student might be expected to contribute.

The first question was whether the \$355 deduction was a reasonable method of rendering the student ineligible. The Board noted that there is no statutory guidance for determining the way in which an adult member of an intact family can be deleted

from an allowance. In the absence of clear legislative direction, the Board found that the Administrator's policy was reasonable.

The Board also noted that other decisions have considered the \$355 deduction to be comparable to an income charge against the family's entitlement. They found that this amount was arbitrary because it was not related to the actual amount of income available to the student. It was this panel's view, however, that the student deduction is not an income charge against entitlement but rather a method of removing the ineligible student from the family's allowance.

The Board was not satisfied that there is statutory authority for assessing a roomer charge against the family's entitlement. According to the legislation, the roomer charge of \$60 is usually applied in situations where a recipient provides meals and lodging to a "person". In the Board's view, it is not consistent with the purpose and intent of the legislation to consider spouses to be roomers of one another. The Board concluded that the \$60 deduction could not be applied in this case. **Appeal granted in part. Decision of the Administrator rescinded in part.** (8 pp; English)

REFERENCES: O.Reg. 534 s. 7(2.1) ■

ONTARIO STUDENT ASSISTANCE PROGRAM

Other Index Terms: STUDENTS

File Number: N0405-09

Date of Hearing: April 7, 1995

Presiding Member: T. Walsh

The Appellant received General Welfare Assistance as a single, employable person. He

advised his welfare worker that he was going to be accepted into Vocational Rehabilitation Services in a few months time. However, when his worker next contacted him he stated that he was attending school full-time and had applied for an Ontario Student Assistance Program loan. He was advised that he would be ineligible for assistance if he received the loan.

However, because he had not yet received the money, the Administrator agreed to issue a cheque on a recoverable basis, and so an overpayment was established. The Appellant appealed both this overpayment and the termination of his assistance.

The Appellant explained that when he had applied for OSAP he had advised them that he was receiving welfare. The amount of the loan therefore took that into account and did not include any money for living expenses.

The Administrator argued that the Appellant was ineligible once he was "in receipt of" an OSAP loan, and that the amount received was irrelevant; the Appellant's dispute was with OSAP, not with SARB. Respecting the overpayment, the Administrator had viewed it as "punitive" to refuse assistance until the Appellant had actually received his loan and had been issued money on a recoverable basis only.

The Board agreed with the Administrator's arguments and found that the termination of the Appellant's assistance was proper. The Board's jurisdiction respecting the overpayment was therefore limited.

REFERENCES: O.Reg. 537 s. 7(2)(a); s.15(2)33 ■

ONTARIO STUDENT ASSISTANCE PROGRAM

Other Index Terms: STUDENTS; SHELTER

File Number: N0630-49

Date of Hearing: February 24, 1995

Presiding Member: J. Sarra

The Appellants applied for and were eligible for General Welfare Assistance as a head of family and dependent spouse. The spouse applied for and received a student loan in order to attend an approved college course full time. All of the loan was paid towards the tuition.

The Administrator recalculated the General Welfare Assistance, deducting \$355 and \$60 from the total amount. The Administrator, relying upon the policy directive dated August 17, 1993, submitted that this money was deducted to conform with sections 7(2.1), 15(2)(1) and 15(2)(15.1) of Regulation 537. The directive specifies that the \$355 deduction represents the basic needs portion of one adult in a two adult family and that the \$60 deduction represents a minimum roomer charge to reflect "other shelter costs the student is expected to contribute towards". The issue before the Board was whether the policy-dictated reduction in the Appellant's assistance complies with the requirements of O.Reg. 537.

There was no dispute that the Appellant was "in need" and residing in the municipality in question. The question, however, was whether the Appellants met the remaining eligibility criteria.

Section 4(1b) specifies that students are not entitled to assistance unless they are eligible under section 7. In the Board's view, the

GENERAL WELFARE ASSISTANCE ACT

regulation is circular. To qualify under s.4(1b), a person must be eligible under s.7, and to be eligible under s.7, a person is subject to the requirements under s.4. The result of the interaction of these provisions is less than clear, as confirmed by the wide variety of interpretations given by this Board. It is important to note, however, that the express wording of s.7(2.1) does not render a student ineligible for all purposes, but rather, renders the student ineligible only for the student exemption from job search requirements. Section 4(1b), however, clearly states that where a student is not eligible for this exemption, the student is not entitled to receive assistance.

What then are the implications for the rest of the family unit which, were it not for the student loan received by one of its members, fully meets all of the eligibility criteria? In the Board's view, the interpretation most in keeping with the express wording of the Regulation and with the general framework of the legislation, is that an amount representative of the individual student's entitlement must be deducted from the total amount of assistance.

The Board considered the deduction of \$355 and noted that since the Regulation does not identify the calculation which should be used to make this deduction, the amount was not contrary to the legislation. Moreover, \$355 approximates what the adult student would be entitled to for basic needs and basic shelter. The Board found that this was a reasonable calculation. The Board appreciates that this deduction still creates hardship for those whose student loans do not provide them with income greater than what they must pay out for tuition and books; however, by calculating the deduction in this way, the Administrator does not penalize the entire family.

The Board further noted that the \$355 deduction is not "deemed student award income", which would be dealt with under s.15 of the Regulation. To view the \$355 deduction as the amount representing the "disentitlement" of the student alone is a reasonable interpretation in the Board's view.

The Board, however, found that the roomer charge of \$60 was not valid. In this case the student continued to be part of the family unit and her income to the family unit was already counted in both the eligibility and the income reporting requirements. To deduct a roomer charge would be deducting the same money twice from the family's entitlement. **Appeal granted in part. Decision of the Administrator affirmed in part and rescinded in part.** (13 pp; English) ■

REFERENCES: O.Reg. 537 s.4(1b), s.7(1)(b), s.7(1)(c), s.7(2.1). s.15(2)33 ■

REFUGEES

Other Index Terms: CO-RESIDENCE; EVIDENCE

File Number: M0411-01

Date of Hearing: March 2, 1995

Presiding Member: T. Walsh

This case involved two decisions of the Administrator, one made in November 1993 and one in June 1994. The first issue under appeal was whether the Appellant's husband was ineligible for General Welfare Assistance by reason of s.7(7) of Regulation 537. The second issue under appeal was whether the Administrator was correct in June 1994 in reducing the Appellant's assistance to reflect her co-residency with her husband, pursuant to s.31(1) of the Regulation.

There was no dispute that the Appellant and her spouse shared accommodation and that her spouse would otherwise have been eligible as a dependant. However, the Administrator's submission stated that the November 1993 refusal occurred because the Appellant's spouse had been refused refugee status and had not appealed that decision.

The Appellant's husband testified that he had claimed refugee status shortly after arriving in Canada but that it had been refused. He stated that he had then written a letter of appeal to Immigration Canada. However, he then moved to another city and attempted to have his immigration file transferred. When asked by the welfare office in the fall of 1993 to provide proof of his efforts to appeal his immigration status, he advised them that neither he or his lawyer had been unable to get a copy of his file.

A copy of a lawyer's letter asking Immigration Canada for clarification of the husband's status was entered into evidence. This letter stated that he had been refused refugee status but with "automatic further consideration of his case" and that he had recently married the Appellant, a landed immigrant. This letter also noted that all necessary documentation and payment for transferring the husband's immigration file had been completed. The Appellant herself applied to sponsor her husband in December 1993 and advised her caseworker of this. However, Immigration Canada had informed the General Welfare office that success was doubtful because the Appellant was a recipient of social assistance.

The Appellant's representative argued that the husband was not ineligible under s.7(7) because he had had ongoing contact with Immigration Canada in an effort to obtain residency status, and because his wife had

applied to sponsor him. Moreover, the lawyers' letters reflected the difficulty that the Appellant and her husband faced in getting evidence of his appeal of the refusal of refugee status. The representative argued that the Administrator had decided that the husband had not appealed this refusal on the basis of a statement by Immigration Canada. This statement was that the Appellant's husband claimed to have appealed his refusal to the Federal Court but could not provide proof of his appeal. The Appellant's representative challenged the view that the only evidence acceptable for the purposes of s.7(7)(a) or 7(7)(b)(ii) is an appeal to the Federal Court of Canada.

In the opinion of the Board, the evidence indicated that the Appellant and her husband were attempting to remedy his immigration status after the refusal of November 1993. However, the Board concluded that at the time of this refusal, the Appellant had not presented sufficient evidence to the Administrator that the husband had either appealed his refusal of refugee status or made an application under s.114(2) of the *Immigration Act*. **The Board therefore affirmed the first decision of the Administrator.**

Regarding the second decision, there was no dispute that the Appellant's husband fit the definition of "dependant". However, s.7(7) clearly states that a person is not eligible for assistance under particular circumstances, one of which is when the person is otherwise eligible as a dependent. Section 7(7), however, would apply only if the Administrator believed at the time of his decision that the Appellant's husband had not yet taken action on his immigration status. The evidence was clear that the Administrator was aware of the sponsorship application that was in process. **The Board therefore**

rescinded the second decision of the Administrator. (9 pp; English)

REFERENCES: O.Reg. 537 s.7(7), s.7(7)(a), s.7(7)(b)(ii), s.31(1)

SHELTER

File Number: M1228-04
Date of Hearing: January 25, 1995
Presiding Member: E. Novac

While receiving General Welfare Assistance, the Appellant purchased a home. He borrowed the down payment from a relative of his spouse. In order to protect his interest, the relative was named as a joint tenant.

Due, however, to administrative error, the Appellant continued to receive his full variable shelter allowance for a number of months. Then the Administrator reduced the amount of the variable shelter allowance by one third to reflect the fact that the relative was a joint tenant who shared equally in the equity and financial obligations respecting the property. The Appellant disagreed with this decision because, by a private arrangement between the three parties, the relative did not pay a portion of the mortgage payments.

Section 13(1)(b) of Regulation 537 indicates that the principal and interest on a mortgage are part of a person's shelter costs. The Board agreed with the Administrator that as a joint tenant of the property, the relative was deemed to be responsible for a portion of the mortgage. In the opinion of the Board, it would be improper for him to expect his share of the mortgage costs to be paid by the welfare department on behalf of the Appellant and his spouse. **Appeal denied. Decision of the Administrator affirmed.** (6 pp; English)

REFERENCES: O.Reg. 537 s.13(1)(b) ■

SPOUSAL DECLARATION

Other Index Terms: AGE; DEPENDENT ADULT

File Number: N0113-09
Date of Hearing: January 31, 1995
Presiding Member: K. Zinger

The Appellant and A. applied for assistance as a common law couple. Because A. was 16 years old at the time, the department sent her parents a questionnaire to determine whether she could be living in her parental home. Her father completed the questionnaire, indicating that she had left the parental home to live with her boyfriend and that she was welcome to return home at any time. The Administrator determined that there were no special circumstances for A. to be living outside her parents' home and the Appellant was refused additional assistance for her as his dependent.

However, the evidence indicated that they had made application as common law spouses, a fact acknowledged in the Administrator's submission. They planned to marry when A. had finished school. The Board accepted this evidence. It would therefore appear that the Appellant and A. were entitled to assistance as a family unit except for the fact that the Administrator had denied assistance for A. pursuant to s.7(4). The question before the Board was whether s.7(4) disqualified A. from receiving assistance.

Subsection 7(4) states that a "person" under the age of 18 cannot receive assistance unless he or she is the head of a family or unless there exist special circumstances. On the surface, it would appear to the Board that this applies to every person under the age of 18, not only to an applicant but to a dependant of

an applicant as well. If this were so, a literal interpretation of subsection 7(4) would mean that an Administrator could not provide a head of a family with assistance for his or her children under the age of 18 unless there were special circumstances.

This interpretation, however, leads to an absurd result and the Board could only conclude that s.7(4) refers to an applicant under the age of 18 who is applying for assistance in his or her own right. The Board also noted that the policy guideline refers to "applicants" under age 18.

In this case, there was no evidence that A. had applied for assistance in her own right as a single person. However, it was clear to the board that the Appellant and A. were spouses. As such, the Appellant was "head of the family" and A. was a "dependent adult". As a dependent adult, A. was not an applicant and the Board concluded that s.7(4) did not apply in this case. **Appeal granted. Decision of the Administrator rescinded.** (5pp; English).

REFERENCES: O.Reg. 537 s.1(1), s.7(4), s.7(4)(b) ■

CUMULATIVE INDEX

This index includes cases published in Volume 4 and Volume 5:1 of
SUMMARIES OF DECISIONS

PART I: DECISIONS UNDER THE FAMILY BENEFITS ACT

CO-RESIDENCE

L1028-20

Volume 4 May 1995 p.10

N0302-45

Volume 5:1 Aug 1995 p. 7

DISABLED PERSON

M1202-62

Volume 4 May 1995 p. 8

EVIDENCE

M1012-39

Volume 4 May 1995 p. 9

FAILURE TO PROVIDE INFORMATION

M0429-31

Volume 4 May 1995 p. 11

INTERIM ASSISTANCE

M0219-20

Volume 4 May 1995 p. 8

ASSETS

M1027-08

Volume 5:1 Aug 1995 p. 7

ASSIGNMENT

M1223-50

Volume 4 May 1995 p. 7

AVAILABLE FINANCIAL RESOURCE

M0429-31

Volume 4 May 1995 p.11

CASUAL GIFTS

N0322-06

Volume 5:1 Aug 1995 p. 8

CUMULATIVE INDEX

JURISDICTIONAL ISSUES

M0219-20
Volume 4 May 1995 p. 8

LIQUID ASSETS

M1202-62
Volume 4 May 1995 p. 8

OVERPAYMENTS

M0219-20
Volume 4 May 1995 p. 8

M1223-50
Volume 4 May 1995 p. 7

PAYMENTS RECEIVED

N0322-06
Volume 5:1 Aug 1995 p. 8

PERMANENTLY UNEMPLOYABLE PERSON

M1012-39
Volume 4 May 1995 p. 9

SHELTER

N0302-45 Aug 1995 p. 7

SPONSORED DEPENDANT OR NOMINATED RELATIVE

M0715-02
Volume 4 May 1995 p. 9

SPOUSE

L1028-20
Volume 4 May 1995 p.10

TRUSTS

M0429-31
Volume 4 May 1995 p.11

PART II: DECISIONS UNDER THE GENERAL WELFARE ASSISTANCE ACT

ADJOURNMENTS

M1027-05
Volume 4 May 1995 p.15

N0411-20
Volume 5:1 Aug 1995 p. 9

AGE

N0113-09
Volume 5:1 Aug 1995 p.16

N0721-49
Volume 5:1 Aug 1995 p.10

COMMUNITY START-UP

M0221-15
Volume 4 May 1995 p.12

CO-RESIDENCE

M0411-01
Volume 5:1 Aug 1995 p.14

CREDIBILITY

L1018-17
Volume 4 May 1995 p.14

M1116-41
Volume 4 May 1995 p.16

DEPENDENT ADULT

N0113-09
Volume 5 Aug 1995 p.16

DISCRETION

L1110-11
Volume 4 May 1995 p.13

M0721-01
Volume 5:1 Aug 1995 p.10

EVIDENCE

M0411-01
Volume 5:1 Aug 1995 p.14

M0721-01
Volume 5:1 Aug 1995 p.10

FAILURE TO PROVIDE INFORMATION

M1027-05
Volume 4 May 1995 p.15

FRAUD

N0411-20
Volume 5:1 Aug 1995 p. 9

HEAD OF A FAMILY

L1018-17
Volume 4 May 1995 p.14

M1231-14
Volume 4 May 1995 p.17

| | | | |
|---------------|----------|--|------|
| LIQUID ASSETS | | | |
| M0721-01 | | | |
| Volume 5:1 | Aug 1995 | | p.10 |
| M0815-17 | | | |
| Volume 4 | May 1995 | | p.15 |

| | | | |
|------------------------------------|----------|--|------|
| ONTARIO STUDENT ASSISTANCE PROGRAM | | | |
| L1110-11 | | | |
| Volume 4 | May 1995 | | p.13 |
| N0105-03 | | | |
| Volume 5:1 | Aug 1995 | | p.12 |
| N0405-09 | | | |
| Volume 5:1 | Aug 1995 | | p.12 |
| N0630-49 | | | |
| Volume 5:1 | Aug 1995 | | p.13 |

| | | | |
|----------|----------|--|------|
| ONUS | | | |
| M1027-05 | | | |
| Volume 4 | May 1995 | | p.15 |

| | | | |
|-------------------|----------|--|------|
| PAYMENTS RECEIVED | | | |
| M1116-41 | | | |
| Volume 4 | May 1995 | | p.16 |

| | | | |
|------------|----------|--|------|
| REFUGEES | | | |
| M0411-01 | | | |
| Volume 5:1 | Aug 1995 | | p.14 |

| | | | |
|-----------|----------|--|------|
| RESIDENCE | | | |
| M0829-06 | | | |
| Volume 4 | May 1995 | | p.17 |

| | | | |
|---------------|----------|--|------|
| SELF-EMPLOYED | | | |
| M1231-14 | | | |
| Volume 4 | May 1995 | | p.17 |

| | | | |
|------------|----------|--|------|
| SHELTER | | | |
| M1228-04 | | | |
| Volume 5:1 | Aug 1995 | | p.16 |
| M1218-36 | | | |
| Volume 4 | May 1995 | | p.18 |
| N0105-03 | | | |
| Volume 5:1 | Aug 1995 | | p.12 |
| N0630-49 | | | |
| Volume 5:1 | Aug 1995 | | p.13 |

| | | | |
|---------------------|----------|--|------|
| SPOUSAL DECLARATION | | | |
| M1203-06 | | | |
| Volume 4 | May 1995 | | p.19 |
| N0113-09 | | | |
| Volume 5;1 | Aug 1995 | | p.16 |

| | | | |
|----------|----------|--|------|
| N0209-23 | | | |
| Volume 4 | May 1995 | | p.18 |

| | | | |
|----------|----------|--|------|
| SPOUSE | | | |
| M1203-06 | | | |
| Volume 4 | May 1995 | | p.19 |
| N0209-23 | | | |
| Volume 4 | May 1995 | | p.18 |

| | | | |
|------------|----------|--|------|
| STUDENTS | | | |
| N0105-03 | | | |
| Volume 5:1 | Aug 1995 | | p.12 |
| N0405-09 | | | |
| Volume 5:1 | Aug 1995 | | p.12 |
| N0630-49 | | | |
| Volume 5:1 | Aug 1995 | | p.13 |

PART III: DECISIONS UNDER THE VOCATIONAL REHABILITATION SERVICES ACT

| | | | |
|-----------------|----------|--|------|
| DISABLED PERSON | | | |
| L0413-38 | | | |
| Volume 4 | May 1995 | | p.20 |

| | | | |
|-------------------------------|----------|--|------|
| GOODS, ALLOWANCES OR SERVICES | | | |
| N0218-35 | | | |
| Volume 4 | May 1995 | | p.21 |

REFERENCES TO STATUTES AND REGULATIONS

| | | | |
|----------------------------|----------|--|------|
| <i>Family Benefits Act</i> | | | |
| 12(a) | | | |
| L1110-11 | | | |
| Volume 4 | May 1995 | | p.13 |
| 14(2) | | | |
| M0219-20 | | | |
| Volume 4 | May 1995 | | p. 8 |
| 17 | | | |
| M0219-20 | | | |
| Volume 4 | May 1995 | | p. 8 |

CUMULATIVE INDEX

General Welfare Assistance Act

10(2)(a)
L1110-11
Volume 4 May 1995 p.13

10(2)(b)
M1027-05
Volume 4 May 1995 p.15

Interpretation Act

29(1)
L1110-11
Volume 4 May 1995 p.13

29(2)
L1110-11
Volume 4 May 1995 p.13

Regulation 366

1(3)
L1028-20
Volume 4 May 1995 p.10

3(1)(b)
M0429-31 May 1995 p.11

6(2)
M1202-62
Volume 4 May 1995 p. 8

13(2)10
M0715-02
Volume 4 May 1995 p. 9

13(2)10.1
M0715-02
Volume 4 May 1995 p. 9

13(15)
M0715-02
Volume 4 May 1995 p. 9

13(16)
M0715-02
Volume 4 May 1995 p. 9

13(17)
M0715-02
Volume 4 May 1995 p. 9

Regulation 441

1(2)(b)
L1018-17
Volume 4 May 1995 p.14

Regulation 537

1(1)(a)
N0209-23
Volume 4 May 1995 p.18

M1203-06
Volume 4 May 1995 p.19

1(9)
M1231-14
Volume 4 May 1995 p.17

4(3)(b)
M0429-31
Volume 4 May 1995 p.11

7(1)
L1110-11
Volume 4 May 1995 p.13

7(2)
L1110-11
Volume 4 May 1995 p.13

7(7)
M0829-06
Volume 4 May 1995 p.17

13(1)(a)
M1218-36
Volume 4 May 1995 p.18

15(2)(3)
M1116-41
Volume 4 May 1995 p.16

15(2)(9)
M1218-36
Volume 4 May 1995 p.18

35(1)
M0221-15
Volume 4 May 1995 p.12

Regulation 943

1(2)
L0413-38
Volume 4 May 1995 p.20

1(2)(d)
N0218-35
Volume 4 May 1995 p.21

Trustee Act

36(6)
M0429-31
Volume 4 May 1995 p.11

Vocational Rehabilitation Services Act

1(b)
L0413-38
Volume 4 May 1995 p.20

REFERENCES TO MANUALS

General Welfare Policy Guidelines

| | | | |
|-----------------|----------|------|--|
| Policy #0303-08 | | | |
| N0209-23 | | | |
| Volume 4 | May 1995 | p.18 | |
| M1203-06 | | | |
| Volume 4 | May 1995 | p.19 | |

DEFINITIONS*absent*

| | | | |
|----------|----------|------|--|
| L1018-17 | | | |
| Volume 4 | May 1995 | p.14 | |

allowance

| | | | |
|----------|----------|------|--|
| M0219-20 | | | |
| Volume 4 | May 1995 | p. 8 | |

may

| | | | |
|----------|----------|------|--|
| L1110-11 | | | |
| Volume 4 | May 1995 | p.13 | |

optimum capacity

| | | | |
|----------|----------|------|--|
| L0413-38 | | | |
| Volume 4 | May 1995 | p.20 | |

rent

| | | | |
|----------|----------|------|--|
| M1218-36 | | | |
| Volume 4 | May 1995 | p.18 | |

residing in the home of

| | | | |
|----------|----------|------|--|
| M0715-02 | | | |
| Volume 4 | May 1995 | p. 9 | |

substantially gainful occupation

| | | | |
|----------|----------|------|---|
| L0413-38 | | | |
| Volume 4 | May 1995 | p.20 | ■ |

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3 1761 11546516 3